

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

CHANGZHOU KAIDI ELECTRICAL)
COMPANY, LTD., ET AL.,)
Plaintiff/Counter-Defendant,)
vs.) CIVIL CASE NO. CCB-13-1798
OKIN AMERICA, INC., ET AL.,)
Defendant/Counter-Plaintiff.)
_____)

Monday, May 11, 2015
Courtroom 7D
Baltimore, Maryland

BEFORE: THE HONORABLE CATHERINE C. BLAKE, JUDGE
(AND A JURY)

For the Plaintiff/Counter-Defendant:

Gary M. Hnath, Esquire
Brian A. Rosenthal, Esquire
Michael Lindinger, Esquire

For the Defendant/Counter-Plaintiff:

John T. Johnson, Esquire
Francis J. Gorman, Esquire
Michael Autuoro, Esquire

Also Present:

Shucheng "Leo" Zhou, Corporate Representative, Changzhou Kaidi
Greg Bowen, Corporate Representative, Okin America
Allen Eaton, Trial Technician - Plaintiff/Counter-Defendant
Michael Miller, Trial Technician - Defendant/Counter-Plaintiff

Reported by:

Douglas J. Zweizig, RDR, CRR
Federal Official Court Reporter
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Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

P R O C E E D I N G S

(Jury voir dire was recorded stenographically and is not transcribed at this time.)

A F T E R N O O N S E S S I O N

(Proceedings were heard outside the presence of the jury.)

THE COURT: Well, first of all, it's just a little after 2:00 and I had -- it's my fault. I had not gotten the message to Ms. Moyé that I had wanted to start a little bit before the jury came back, but here we are. And I think we may still be waiting for one juror, although perhaps they're there by now.

So before we go and see if they are all there, let me just see if there's anything else that you need to tell me about regarding the preliminary jury instructions; because, otherwise, that's what I'm going to start with.

I looked through the rest of them over lunch in terms of taking out references to obviousness and willfulness and anything other than Claim 1. So I think I can catch all that as we're going along.

We're going to start with the video, and then we'll just give the shortened version that we talked about of the preliminary instructions.

So a piece of what's at Page 10 and 11, and then we -- I made the other change about putting in Okin's burden by a preponderance of the evidence on Page 13. So I don't think

1 there were any other -- any other issues or problems on the
2 preliminary instructions?

3 **MR. HNATH:** Yeah. Your Honor, I think the only other
4 one was Instruction No. 11, the outline of the trial.

5 **THE COURT:** Okay. What page is that?

6 **MR. HNATH:** Page 23.

7 **THE COURT:** All right.

8 **MR. HNATH:** And the third-to-the-last line, "and that
9 the infringement has been and continues to be willful," should
10 be -- should come out.

11 **THE COURT:** Yes.

12 **MR. HNATH:** I think we had a minor dispute over
13 whether we used "more likely than not."

14 **THE COURT:** Right. I'm using "preponderance of the
15 evidence."

16 **MR. HNATH:** Okay. And the only other change is at the
17 end, the last -- and then the last were two and then the
18 sentence at the top of Page 24 --

19 **THE COURT:** Yes. I've taken out the "willfulness"
20 part. And on the next sentence about damages, actually, it
21 seemed to me I needed to add: "Okin will also present evidence
22 and must prove by a preponderance of the evidence the total
23 amount of damages that it asserts."

24 **MR. HNATH:** Yes, that's perfect.

25 **THE COURT:** And then I would move on to Kaidi and just

1 talk about Claim 1, and I would take out "willfulness."

2 **MR. HNATH:** You're good. You're right on top of it.
3 You caught it.

4 Thank you, Your Honor.

5 **THE COURT:** Yes. I think I got those. Yes.

6 **MR. AUTUORO:** Your Honor, one other thing. I believe
7 we had discussed this last week. Maybe just a brief mention
8 about the ITC and how this case was initiated as an ITC action
9 against Kaidi.

10 **THE COURT:** I have no -- did I get a proposed
11 instruction on that?

12 **MR. AUTUORO:** Yeah. I believe the parties have not
13 proposed a joint instruction.

14 **THE COURT:** I don't think I'm --

15 **MR. ROSENTHAL:** We didn't get one, Your Honor. I
16 think we can just be fair in our presentation.

17 **THE COURT:** I think you'll have to try to do that. I
18 don't think I can add it at this point.

19 **MR. AUTUORO:** All right. Thank you, Your Honor.

20 **THE COURT:** And I'll talk to you again briefly before
21 you actually give the openings, but I do hope we can get moving
22 with them. I see a lot of equipment here and things and
23 tables, and that's all fine.

24 If I didn't previously mention it -- I assume this
25 won't be an issue for anyone -- you can certainly walk around

1 to an extent while you're doing your openings and to show
2 whatever you want to show here.

3 The only thing that I didn't want anybody to do was go
4 up and lean on the front rail and become best friends with
5 Juror No. 1 or something like that; but other than that, you
6 can move around, so . . .

7 Okay. And I'll go ahead and bring in the jury. And I
8 think where we were resolved on the claim of construction, I'm
9 going to read to them at this point. We're not giving them
10 anything, but I'm going to read to them my claim construction
11 just for "surrounded" and for "guide section."

12 (Jury entered the courtroom at 2:10 p.m.)

13 **THE COURT:** And if you'd like to swear in the jury.

14 **THE CLERK:** Members of the jury panel selected in the
15 present case, please stand and raise your right hand.

16 (Jury duly sworn/affirmed.)

17 **THE CLERK:** Thank you. You may be seated.

18 Jury is sworn.

19 **THE COURT:** Thank you.

20 All right. Ladies and gentlemen, before we move into
21 opening statements and then some evidence, I have some
22 preliminary instructions just about your role as jurors in this
23 case.

24 And actually, the first thing we're going to ask you
25 to do is to watch a short video. And let me tell you a little

1 bit about it. It's about a 17-minute video. It's going to
2 provide some background information to help you understand what
3 patents are and why they're needed and the role of the patent
4 office and why there might be disputes about patents.

5 This video was prepared by the Federal Judicial
6 Center. It's an educational part of the judiciary, if you
7 will. It was not prepared by the parties in this case.
8 They've agreed that it would be helpful for you to see it to
9 introduce you to the patent system.

10 Now, is there going to be a sample patent that you
11 want them to look at?

12 **MR. ROSENTHAL:** Yes, Your Honor. It's in the
13 notebooks. If I may, I can distribute the notebooks.

14 **THE COURT:** Yes, if you would do that.

15 The video refers to a sample patent; not the one at
16 issue in this case, but a sample patent. And you're going to
17 have a copy of that in this juror notebook so that you can
18 follow along with the video.

19 And does the notebook have other documents in it as
20 well at this point?

21 **MR. ROSENTHAL:** It has the patent in suit, the sample
22 patent, and some notepaper.

23 **THE COURT:** And some notepaper. Okay.

24 So you don't need to look at it right now, just to use
25 it as the video tells you to follow it along. It's the sample

1 patent and the '144 patent that's at issue in this case.

2 And additionally, some notepaper. I think you
3 probably may have gotten notepaper in your folders as well.
4 But that's what's in the binder. And I guess we'll start.

5 (Video was played but not reported.)

6 **THE COURT:** All right. Thank you.

7 All right. Ladies and gentlemen, with that
8 background, let me give you some additional information.

9 I've told you a little bit already about the positions
10 that the parties are taking in this case. I'll just give you a
11 brief summary. You'll be hearing from them shortly.

12 The parties have already been -- been introduced, and
13 there are -- there's a group called Okin and a group called
14 Kaidi.

15 The case involves United States Patent No. 5,927,144.
16 That patent is owned by Okin. We will probably be referring to
17 it just by the last three numbers, the '144 patent. You don't
18 need to look at it right now. But that is also in your
19 notebook, as you've been told, I think.

20 But Okin is seeking money damages from Kaidi for
21 allegedly infringing this '144 patent by making, importing
22 into, using, selling, and offering for sale a linear actuator
23 product in the United States that Okin argues is covered by
24 Claims 1, 26, 27, and 28 -- and I'll point them out to you in a
25 minute -- of the '144 patent. Now, these may be referred to as

1 the asserted claims or the claims at issue in this case.

2 The product that Okin accuses of infringement is the
3 Kaidi Model No. KDPT005 actuator. It may just be referred to
4 as the "005" actuator or the Kaidi 005.

5 Kaidi denies that it has infringed Claims 1, 26, 27,
6 and 28 of this patent. They also argue that Claim 1 of the
7 '144 patent is invalid. And I'll be instructing you later as
8 to the way in which a patent might be invalid in general. A
9 patent is or may be invalid if it is not new in view of the
10 state of the art at the relevant time.

11 So your job is going to be to decide whether or not
12 Claims 1, 26, 27, and 28 of the '144 patent have been infringed
13 and whether or not Claim 1 of that patent is invalid.

14 If you decide that any claim of the '144 patent has
15 been infringed and it is not invalid, you will then need to
16 decide the money damages to be awarded to Okin to compensate it
17 for the infringement.

18 Now, a patent, as has been explained to you in the
19 video, but you might say that it has two basic parts. There's
20 a written description of the invention, and then there are the
21 patent claims themselves. The written description, which may
22 include drawings, is often referred to as the specification of
23 the patent.

24 Now, if you want to take a look at your '144 patent,
25 just to begin to become familiar with it, I'll just tell you

1 very briefly, and similar to what you saw on the video, the
2 cover page has identifying information.

3 It has such things as the date that the patent was
4 issued. It has the patent number. It has the inventor's name,
5 the filing date. It also has a list of documents or references
6 that were considered in the Patent and Trademark Office when
7 the patent was applied for as it passed through the Patent
8 Office.

9 Now, the specification begins with what's called an
10 abstract. You see that right there on the cover page. It's
11 just a brief statement about the subject matter of this
12 invention.

13 After that abstract, you can see there are various
14 figures, drawing -- 13 numbered figures that are described.
15 After we go past those drawings or figures, they are described
16 in what follows.

17 What you will see when you look at these pages,
18 starting with the specification, you have each page divided
19 into two columns, and those columns are numbered at the top of
20 the page.

21 Also, the lines on each page are numbered so there's
22 some little numbers running down the middle. You've got
23 Column 1 on the left side, Column 2 on the right side; and the
24 numbers that go down the middle tell you which line in that
25 particular column is being discussed.

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1 Now, if you go to the -- and a little -- just go to
2 Column 6 of this patent. Again, as you saw in the video, at
3 the end you have what are called the claims. The claims for
4 this patent start at Column 6. So it says, "I claim," and then
5 there's Number 1. They continue through into Column 8.

6 You see on Claim 1 -- I'm not going to read the whole
7 thing. But it begins [reading]: 1, Drive for adjusting parts
8 of seating and reclining furniture.

9 And then it continues with a number of other
10 sentences. That's the first claim.

11 Now, a claim may be divided into different parts. The
12 different parts would be called claim limitations.

13 If you go through to the next page, the end, you see
14 the claims continue. There are a total of 29 going through the
15 end of Column 8. Not all of these claims are at issue.

16 It's Claim 1 that you saw briefly and Claims 26, 27,
17 and 28. They're there in Column 8. Those are the ones that
18 are at issue that are what you're going to hear the dispute
19 about in this case.

20 Now, the -- I guess you can close that up for the
21 moment.

22 The claims, as I've told you, there are infringement
23 issues as to those claims. There is also an issue as to
24 invalidity as to Claim 1.

25 When you're making your decision about infringement or

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 invalidity, you have to consider each asserted claim
2 separately. It will be on Infringement 1, 26, 27, and 28. And
3 on -- as far as validity, just Claim 1. You need to consider
4 them separately.

5 I also will tell you that there are certain words or
6 phrases in these claims where I was asked to determine the
7 meaning of those claims in advance, and I have determined a
8 meaning for them. There are two in particular that I need to
9 tell you when you get all this, much more detailed writing at
10 the end of the case.

11 But two that I do want you to keep in mind, the word
12 "surrounded" applies in Claim 1. And I have determined that to
13 mean "completely or nearly completely enclosed." So
14 "surrounded" is "completely or nearly completely enclosed."

15 And there is also the term "guide section" in Claim 1.
16 And I have determined that "guide section" means "a two-part
17 component that guides a moving part." So a "guide section" is
18 "a two-part component that guides a moving part." And you'll
19 hear more about this as the case goes along.

20 If there are claim terms that come up and I have not
21 given you a definition, you should apply the ordinary meaning
22 that one skilled in the art would give that claim term.

23 You're going to be hearing from a number of witnesses
24 with skill in this art. And if a claim term -- again, if I
25 have not given you a specific instruction, then it would be up

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 to you to apply the ordinary meaning that a person skilled in
2 the art would give to that term.

3 The fact that I have interpreted some of the language
4 out of the claims should not be taken as an indication that I
5 have any view regarding the issues of infringement and
6 invalidity that you have to decide. I don't. That's entirely
7 up to you.

8 Again, I'm going to be giving you more detailed
9 instructions, both reading them to you and giving them to you
10 in writing, at the end of the case.

11 Now, some more general instructions, or at least
12 instructions that may apply in other cases as well. You've
13 been asked to consider or you will be asked to consider
14 specific legal standards. And you heard a reference, I think,
15 in that video to the preponderance of the evidence to start
16 with.

17 So the first issue you're being asked to decide is
18 whether Okin has shown by a preponderance of the evidence that
19 Kaidi infringed the asserted claims, the claims that are at
20 issue in this '144 patent.

21 As I said, infringement is assessed on a
22 claim-by-claim basis. So there may be infringement as to one
23 claim, but not infringement as to another.

24 There are a few different ways that a patent might be
25 infringed, and I'll explain the requirements in more detail at

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 the end of the case; but in general, Kaidi may infringe the
2 '144 patent by making, using, selling, or offering for sale in
3 the United States or by importing into the United States a
4 product meeting all the requirements of a particular claim of
5 the patent, the one you are considering at the time.

6 Another issue you're going to be asked to decide is
7 whether Claim 1 of the '144 patent is invalid. A patent claim,
8 again, it may be invalid for a number of reasons, including
9 that it claims subject matter that is not new.

10 For a claim to be invalid because it is not new, Kaidi
11 must show by clear and convincing evidence that all the
12 elements of a claim are present in a single previous printed
13 publication or patent. That is what's called the prior art
14 that you heard a little bit about in the video.

15 If a claim is not new, it is said to be anticipated,
16 so you may hear that word as well, "anticipated."

17 Now, if you decide that any claim of the '144 patent
18 has been infringed and that it is not invalid, you'll need to
19 decide the money damages to be awarded to Okin to compensate it
20 for the infringement.

21 The damages award may not be less than what Okin would
22 have received if it had been paid a reasonable royalty. I'll
23 tell you more later about the meaning of a reasonable royalty.

24 Any damages you award are meant to compensate Okin,
25 not to punish Kaidi. So you may not include in your award, if

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 you give one, any additional amount as a fine or penalty above
2 what is necessary to compensate Okin for the infringement. You
3 may not be -- again, it is not to punish Kaidi.

4 You'll get more instructions on damages as the case
5 goes along.

6 Generally also, as you may already know, my job and
7 yours are different. It's my job to instruct you on the law
8 that applies to this case, but it's your job to decide the
9 facts. And then you have to apply the law as I've given it to
10 you, but you're the only judges of the facts.

11 So if any expression of mine or anything I may or may
12 not do or say during the course of the trial makes you think I
13 have some opinion on the factual matters, you must disregard
14 it. It's up to you to decide the facts.

15 You're going to have evidence for you to make that
16 decision. The evidence consists of the sworn testimony of the
17 witnesses. They'll come in and testify to you under oath,
18 regardless of who called them.

19 Any exhibits that are admitted into evidence,
20 regardless of who offered them.

21 And any facts that have been admitted or stipulated
22 to, if there are stipulations.

23 There are certain things that are not evidence, so
24 questions and statements and arguments by the lawyers are not
25 evidence. You shouldn't consider them as evidence.

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 If there's any evidence as to which I sustain an
2 objection or I tell you is stricken or I tell you to disregard
3 it, obviously you should disregard it and it is not evidence.

4 And anything you may see or hear outside the
5 courtroom, it's not evidence. It must be disregarded.

6 When you decide the facts, however, it's up to you to
7 consider not only any evidence to which I refer, if I do
8 throughout the case or later at the end, or not only any
9 evidence that counsel refer to when they argue to you, but any
10 testimony or exhibits that have been admitted in the case that
11 you think is important to your decision, you may consider them.

12 Now -- and as you think about that evidence, you can
13 consider only the evidence that's presented. You can't guess.
14 You can't speculate about some other facts in this case.

15 On the other hand, when you consider the evidence, you
16 can draw what we call inferences that seem justified in the
17 light of your own experience; in other words, reason and common
18 sense might lead you to draw some conclusions from certain
19 facts that have been established by the evidence in the case.
20 And we expect you to apply your common sense.

21 Another way of looking at the evidence is to say that
22 it can be direct or it can be circumstantial.

23 Direct evidence is something like the testimony of an
24 eyewitness: A person who's present at an event comes in and
25 tells you what they saw or heard.

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 The other type of evidence is indirect or
2 circumstantial. It's the proof of a chain of circumstances
3 that point to the existence or nonexistence of certain facts.
4 And I'm going to give you a very simple example of what we're
5 talking about.

6 You came into this courthouse this morning and the sun
7 was shining. But you were locked up in that little room with
8 no windows, and you couldn't see outside. But as you're
9 sitting there, somebody else comes in taking off a raincoat and
10 folding up a dripping, wet umbrella.

11 Well, you didn't look outside the courtroom. You
12 didn't see the rain. But you saw some other facts from which
13 you might conclude that, in fact, it had been raining. That's
14 what we mean when we say there is circumstantial evidence.

15 You decide, on the basis of your reason and experience
16 from some established fact, that another fact exists. And
17 that's an example of it.

18 Circumstantial evidence is of no less value than
19 direct evidence. It's up to you to consider both kinds that
20 you find persuasive.

21 Regarding your conduct as jurors, as I told you and
22 probably will repeat, we need to ask you not to discuss the
23 facts of the case, the evidence in the case with anyone, or let
24 anyone else talk to you about it until you go out to deliberate
25 on your verdict at the end of the case.

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 If anyone -- this is very unlikely. But if anyone
2 should try to talk to you about the case outside the courtroom,
3 please let me or the courtroom deputy know about it right away.
4 Don't talk to them. Just let us know about it.

5 I've told you and I will elaborate that you shouldn't
6 read or listen to or do any research or any investigation about
7 this case.

8 So that includes any of the facts, any of the parties
9 that are involved here. You shouldn't go to dictionaries or
10 reference materials or the Internet or Web sites or blogs or
11 any other electronic means.

12 If there happens to be a newspaper article or a radio
13 or television report about this case, don't read it. Don't
14 watch it. Don't let anybody else read it to you. Again, the
15 reason for this is it's important that you all make a decision
16 based on the evidence that you all hear together in the
17 courtroom.

18 And if it wasn't already clear, that includes don't
19 use your cell phones, tablets, Internet, and other technology
20 tools to try to investigate the case. Don't talk to your
21 family and friends about it. Don't go on Facebook. Don't
22 message. Don't Tweet, Twitter, any of those things.

23 Very important: Don't form any opinion until all the
24 evidence is in. It's important to keep an open mind until you
25 start your deliberations at the end of the case. You'll hear a

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 piece of the evidence come in; but then later you'll hear
2 another piece of the evidence and it may, you know, make you
3 think a different way.

4 So keep your mind open until all the evidence is in
5 and until you've finished your deliberations.

6 Now, during the case, you are permitted to, if you
7 would like, to take notes; take notes on the testimony or write
8 down an exhibit number or your impressions of a witness,
9 something relating to the proceedings. That is absolutely
10 fine.

11 You just need to remember that if some of you take
12 notes and others don't, the notes will not control. It's
13 everybody's individual recollection that's supposed to be
14 considered at the end of the case.

15 And when you -- it's also important to keep in mind
16 that you need to pay attention to the witness and listen and
17 hear what the witness has to say.

18 Your notes, obviously, are not evidence. They're --
19 obviously, you can't take this down completely verbatim, so
20 you're welcome to take notes. But just understand that they
21 have a limited purpose, and they will not control when you come
22 to deliberate at the end.

23 I should probably also tell you that although we have
24 a very experienced court reporter here taking everything down,
25 that does not necessarily mean that there will be transcripts

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 for you at the end of the case. So, again, it's important to
2 pay attention. Take the notes that you need, but listen to the
3 testimony of all the witnesses.

4 You've already seen me bringing the lawyers up to the
5 bench for conferences up here, a bench conference or sometimes
6 called a sidebar. That may happen again in the course of the
7 trial. I apologize. We're not trying to be annoying, but
8 sometimes there are things that I need to talk about with the
9 lawyers up at the bench.

10 And if we seem to be up here a lot or there's a lot of
11 noise or you're just sitting there, feel free to stand up,
12 stretch. Just sort of move around a little bit, as long as you
13 don't leave the jury box, if it's a long conference.

14 Okay. So the trial is going to begin very shortly.

15 Each side has the opportunity to make what's called an
16 opening statement. It's not evidence. It's just an
17 opportunity for the lawyers to explain what they think the
18 evidence is going to show, a little bit about how it's going to
19 come in, because evidence doesn't always come in in a perfectly
20 chronological order.

21 I mentioned that there are two standards of proof that
22 you need to apply to the evidence, depending on the issue
23 you're deciding.

24 On some issues, you have to decide whether facts have
25 been proved by a preponderance of the evidence. I referred to

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 that in terms of Okin proving infringement.

2 A preponderance of the evidence means that the fact
3 that is to be proved is more likely true than not.

4 So the evidence in favor of that fact being true is
5 sufficient to tip the scale, even if slightly, in its favor.

6 On other issues -- and I mentioned Kaidi proving
7 invalidity as to Claim 1, you have to use a higher standard.
8 You have to determine whether the fact has been proved by
9 what's called clear and convincing evidence, that you have been
10 left with a clear conviction that the fact has been proven.

11 Now, I don't honestly recall if any of you had served
12 on criminal juries. These standards are different from what
13 you may have heard about or even applied yourselves in a
14 criminal jury case where a fact has to be proved beyond a
15 reasonable doubt.

16 On a scale of these various standards of proof, you
17 move from preponderance of the evidence, where the proof has to
18 be -- only has to be sufficient to tip the scale in favor of
19 the party proving the fact to beyond a reasonable doubt where
20 the fact has to be proved to a very high degree of certainty.
21 You may think of clear and convincing evidence as being between
22 these two standards.

23 So after the opening statements, Okin is going to
24 present its evidence in support of its contention that
25 Claims 1, 26, 27, and 28 of the '144 patent have been and

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 continue to be infringed by Kaidi.

2 Again, to prove infringement of any claim, Okin must
3 persuade you by a preponderance of the evidence that Kaidi has
4 infringed that claim.

5 Okin will also present regarding and must prove by a
6 preponderance of the evidence the total amount of damages that
7 it asserts would fairly and adequately compensate Okin for
8 Kaidi's infringement.

9 Kaidi will then present its evidence that Claim 1 of
10 the '144 patent is invalid. To prove invalidity, Kaidi must
11 persuade you by clear and convincing evidence that the claim is
12 invalid.

13 Now, in addition to presenting its evidence of
14 invalidity, of course, Kaidi has the opportunity to put on
15 evidence responding to Okin's proof of infringement and
16 responding to Okin's evidence on the total amount of damages.

17 Then Okin has an opportunity to put on evidence
18 responding to Kaidi's evidence that Claim 1 is invalid and to
19 offer any additional evidence of infringement and damages.
20 That's what we're calling -- we would call rebuttal evidence.

21 So at that point Okin, its rebuttal evidence can
22 respond to evidence that was offered by Kaidi. And, finally,
23 Kaidi has the chance to put on rebuttal evidence to support its
24 position about invalidity of Claim 1 by responding to any
25 evidence that Okin offered.

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 Now, it is possible that during the presentation of
2 the evidence, the attorneys will have opportunities, they'll be
3 trying to explain what they believe the evidence has shown or
4 what they believe upcoming evidence will show.

5 I may have some comments on that. If we do, that's --
6 again, attorneys' comments are not evidence. They would only
7 be to help you understand the evidence.

8 But at the end, once all the evidence is done, the
9 attorneys have the chance to make closing arguments. I will
10 give you final instructions on the law that applies to the
11 case, so I will likely give you those instructions before the
12 closing arguments.

13 Once you have all of that, you will be asked to decide
14 the case.

15 Again, regarding the schedule, I've told you, in
16 general, the days that we're going to be here. After today,
17 it's Wednesday, Thursday, Friday, and then as much of Monday,
18 Tuesday, and Wednesday, as much as we need of that next week.

19 We are normally going to begin the day at 9:30 or
20 10:00. Actually, I believe 9:30 probably tomorrow morning, but
21 I'll tell you that at the end of the day.

22 We will recess for lunch. It will either -- it will
23 usually be around 1:00. And then we'll resume again from
24 approximately 2:00 to 5:00. There are going to be breaks here
25 and there in the morning and the afternoon.

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 If I seem to have forgotten to give you a break and if
2 one of you is sitting there uncomfortable and you need it,
3 please get my attention or Ms. Moyé's attention. We don't want
4 anybody to be uncomfortable. So we'll give you a break if you
5 need it.

6 All right. The only day that I'm likely to go much
7 past 5:00 -- and I still won't go -- normally would not go
8 terribly late -- is if you are deliberating. If you have the
9 case for deliberations, you might want to be able to stay a
10 little bit longer than 5 o'clock.

11 And, finally, what I will tell you is just that one of
12 the things when you do go out to deliberate that I'll ask you
13 to do is to elect a foreperson. The foreperson can be any one
14 of you. I just put you in the box in the order that you were
15 there.

16 The foreperson doesn't get an extra vote. We just
17 need somebody to sort of preside over your deliberations and be
18 your spokesperson in court. So I'll ask you to just select
19 someone to do that at the end of the case.

20 All right. Counsel, regarding those preliminary
21 instructions, anything you need to see me about? Otherwise,
22 I'll give the jury a short break before we go into openings.

23 **MR. JOHNSON:** No, Your Honor.

24 **THE COURT:** No? Okay.

25 **MR. ROSENTHAL:** No issues, Your Honor.

~~PRELIMINARY INSTRUCTIONS TO THE JURY~~

1 **THE COURT:** All right. Ladies and gentlemen, we're
2 going to take just about between a five- and ten-minute recess
3 just to let everything -- make sure everything is all set up,
4 and then we'll be going into the openings.

5 Let's see. I believe you'll be hearing from Kaidi and
6 then from Okin.

7 But please step back in the jury room for just a few
8 minutes.

9 (Jury left the courtroom at 2:54 p.m.)

10 **THE COURT:** So you can sit down. Just tell me what
11 you have or have not worked out about openings.

12 **MR. ROSENTHAL:** Your Honor, I think we have resolved
13 everything on Kaidi's opening with one possible exception.

14 There was, I think, an objection to one of the slides
15 in our opening where we were putting up a piece of prior art,
16 and we were also showing a picture at Slide No. 43 in our dec.
17 And we were putting up a picture -- it's up on this monitor as
18 well if that helps.

19 Our expert, Dr. Howard, is going to opine in this case
20 that if the guide is interpreted in such a way that it would
21 read on our spindle cover, the same would be true of the prior
22 art Takei. And this picture is being used to demonstrate that,
23 that comparison, and there's an objection to that slide.

24 I believe that's the only other issue that remains.

25 The parties did agree, with respect to the issue we

1 raised this morning, we are not going to object to any
2 discussion of the use of the BetaDrive in designing our
3 original design, but they have agreed not to use the word
4 "copy" or "copying."

5 **THE COURT:** Good.

6 **MR. ROSENTHAL:** We are going to be allowed to talk
7 about what we did with respect to the patent, but we are not
8 going to use the word "design around."

9 **THE COURT:** Okay. Sounds reasonable.

10 **MR. ROSENTHAL:** But I think -- I think this is all
11 that remains.

12 **THE COURT:** All right. Do you want to be heard on
13 this slide?

14 **MR. AUTUORO:** Yes, Your Honor.

15 **THE COURT:** Okay.

16 **MR. AUTUORO:** Yeah, just briefly.

17 Our position on this slide is that it's just -- first
18 of all, it's argument.

19 But, second of all, it's an improper comparison. In
20 order for an invalidity argument to be made, the proper thing
21 to do is to prepare -- compare the prior art to the claims.

22 And by trying to draw an analogy either through this
23 slide from the accused product to the patented product, it's
24 prejudicial, number one.

25 And, number two, it's not the proper lens through

1 which validity of Claim 1 should be viewed.

2 **THE COURT:** Would their expert not be allowed to
3 testify using this?

4 **MR. AUTUORO:** Well, what -- this is called a
5 "practicing the prior art" defense. And we would submit, no,
6 that this sort of testimony to say, "Well, we don't infringe
7 Claim 1, because if we did, then our product would be
8 essentially practicing the prior art and your patent would be
9 invalid," that is something that's been expressly rejected by
10 the Federal Circuit. I even have a cite for you of a case that
11 rejects this notion of practicing the prior art defense.

12 The way that it should be viewed is that, you know,
13 invalidity and should be viewed with respect to the claims and
14 so should infringement with respect to the claims, not a
15 comparison of one thing against the other.

16 And so specifically, one case is Tate Access Floors,
17 279 F.3d 1357. It's a Federal Circuit case from 2002,
18 Your Honor.

19 **THE COURT:** So you would object to that same
20 testimony?

21 **MR. AUTUORO:** Yes, this comparison -- this line of
22 comparison between the prior art and the accused product.

23 **THE COURT:** Mr. Rosenthal?

24 **MR. ROSENTHAL:** Your Honor, we offered to just only
25 show the Takei Figure 3; just forget about the comparison for

1 the slide. Counsel said they'd have the same objection.

2 So I'm not sure what I can say. A part of our case --
3 and it's an important part of our case -- is that if "guide" is
4 interpreted in such a way that a cover meets it, then the
5 claims would be interpreted such that it would read on the
6 prior art.

7 That is not a "practicing the prior art" defense,
8 which has been looked at with disfavor. That is simply saying
9 if the claims are interpreted one way to render infringement
10 possible, that same interpretation must apply to the invalidity
11 analysis. And under that interpretation, the claims would be
12 invalid. That is par for the course in patent cases. That's
13 what always happens.

14 **THE COURT:** Okay. Well, I think at this point if we
15 limit it to the Takei Figure 3, I can't imagine that the jury's
16 not going to be allowed to see that. That's a piece of the
17 prior art, as I understand it, that's fairly important in this
18 case, so let's limit it to that.

19 And if you want to -- I'll take a look at the Tate
20 case, and you can alert me when we get closer to this issue
21 with the actual expert.

22 **MR. AUTUORO:** The only reason, Your Honor, that we
23 maintain the objection in this slide is that counsel informed
24 me that orally he would be essentially making the same point,
25 that this comparison is a valid comparison, when in reality the

1 test should be whether or not the accused device meets the
2 limitation of guide in the claims and whether or not what's
3 shown in Takei meets that limitation as well and not whether
4 there's a valid comparison to be drawn between the two.

5 **THE COURT:** Okay. Well, of course, I've told them the
6 openings are not evidence, and they'll have all kinds of
7 instructions at the end of the case. So I think we'll be fine
8 on that.

9 Anything else?

10 **MR. ROSENTHAL:** Your Honor, I think that's it for
11 ours. I'm assuming that all the other issues that we discussed
12 are, in fact, agreed.

13 **MR. AUTUORO:** Well, one other issue we hadn't agreed
14 on is Slide 45. Counsel had put forward just an image of a
15 train, and I think he was seeking to make an analogy using this
16 image. Again, we object to that image as improper argument for
17 opening.

18 **MR. ROSENTHAL:** I thought we had an agreement that
19 this is in; and I made a bunch of concessions and took a bunch
20 of stuff out, and we said that's a deal. But I can argue this
21 if you'd like.

22 I'm going to simply analogize the question that the
23 jury is being presented with the question that this picture
24 asks, which is, "What is guiding this train, the platform or
25 the train tracks?" I'm not making arguments. I'm asking a

1 question, and this is an analogy that's going to be made by
2 witnesses in this case.

3 **THE COURT:** Okay. That's fine. You can do it.

4 **MR. ROSENTHAL:** Thank you, Your Honor. I do have some
5 issues with the other side's opening.

6 I think we have -- I think we've resolved almost
7 everything. Did we resolve the declaration?

8 **MR. HNATH:** No.

9 **MR. ROSENTHAL:** So I think the only remaining issue is
10 the declaration. There is a slide, which unfortunately I don't
11 have the number of, but they want to show a declaration of
12 Mr. Yao.

13 Mr. Yao is going to testify in this case. The
14 declaration talks about why certain components are called
15 Guide Rail A and Guide Rail B.

16 **THE COURT:** 145?

17 **MR. ROSENTHAL:** It's 145. It's a declaration by a
18 witness who will be testifying in this case. We have no
19 problem at all, of course, with them saying Mr. Yao will say
20 this.

21 This is, I'm sure, going to be used as impeachment if
22 he says something different, but this is a declaration. It's
23 not going to be admitted as evidence. It's hearsay. It's an
24 out-of-court statement. We don't see any exception here.

25 **MR. AUTUORO:** On this, Your Honor, we thought this

1 would qualify as a hearsay exception, both as a statement
2 against interest and an admission by a party-opponent. This
3 was a declaration that was submitted in connection with summary
4 judgment briefings in this case on behalf of Kaidi.

5 And so we're just simply trying to point out something
6 that was said on behalf of Kaidi. We think it would qualify as
7 a hearsay exception and, therefore, be admissible.

8 **THE COURT:** So is it on the exhibit list as something
9 that's objected to?

10 **MR. ROSENTHAL:** I believe so, Your Honor. And we
11 objected on hearsay grounds.

12 **THE COURT:** If there is a pending objection on hearsay
13 grounds that I have not had a chance to resolve, I think it's
14 probably best if you don't actually show the declaration at
15 this point. You can obviously say what you expect the
16 testimony is going to be.

17 **MR. AUTUORO:** Thank you, Your Honor.

18 **MR. ROSENTHAL:** Thank you, Your Honor. And I --

19 **THE COURT:** Anything else?

20 **MR. ROSENTHAL:** I just want to confirm the other
21 arrangements that we made putting the other things that you
22 said that you would do.

23 You are doing those things --

24 **MR. JOHNSON:** Yes.

25 **MR. ROSENTHAL:** -- without compromise?

1 Good. Then I believe that's it, Your Honor.

2 **THE COURT:** All right. Then why don't we just take a
3 five-minute recess for everybody. And then we can go --
4 understanding that neither side's going more than an hour, we
5 can get through both openings today.

6 I don't think we're going to be getting to witnesses.
7 But we'll get to -- and 9:30 tomorrow morning -- not tomorrow.
8 Sorry -- Wednesday, Wednesday morning?

9 **MR. ROSENTHAL:** Yes.

10 **MR. JOHNSON:** Yes, Your Honor.

11 **THE COURT:** All right. Let's take five minutes, and
12 then we'll go through both arguments, statements.

13 (A recess was taken.)

14 (Jury entered the courtroom at 3:12 p.m.)

15 **THE COURT:** Welcome back. You can all be seated.

16 And I believe I forgot to mention, ladies and
17 gentlemen -- I told you about taking notes. In terms of asking
18 questions, I think you'll find that the lawyers are going to be
19 quite thorough in asking their questions.

20 But if a question occurs to you that's not being
21 answered, you can write it down on a piece of paper. Don't
22 discuss it with everybody else, but just write it down on a
23 piece of paper. Get my attention or Ms. Moyé's attention, and
24 we'll take a look at the question. I'll talk to counsel. If
25 it's something that we can answer, we will.

1 So thank you. Sorry. I forgot to say that.

2 All right. We're going to be hearing from Kaidi
3 first, I believe. Thank you.

4 **MR. HNATH:** Thank you, Your Honor.

5 And good afternoon, ladies and gentlemen. My name is
6 Gary Hnath. I'm with the law firm of Mayer Brown, and our law
7 firm represents the plaintiffs in this case, Changzhou Kaidi
8 Electrical Company and Kaidi, LLC.

9 And, first of all, I wanted to thank you for serving
10 as jurors in this case. This is a very important case to our
11 clients, and we know your time is very valuable. And we very
12 much appreciate you spending your time over the next week and a
13 half to hear the case.

14 I'm going to give you just some brief introductions.

15 First of all, let me introduce our legal team. In
16 addition to me, Mr. Brian Rosenthal, he's one of our attorneys.

17 Bryan Nese you'll be hearing from as well.

18 And Mike Lindinger, also with our law firm.

19 We have Mr. Allen Eaton, who is going to be our
20 "Wizard of Oz." He's going to be pulling up exhibits and
21 deposition transcripts as we go along.

22 And then I wanted to introduce our client to you,
23 Mr. Rongqing Zhou.

24 Mr. Zhou, if you could rise.

25 Mr. Zhou is the founder and chairman of Changzhou

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1 Kaidi.

2 Leo Zhou, Shucheng Zhou, is Mr. Zhou's son. He's a
3 director of Kaidi. He will be our corporate representative,
4 sitting at the table with us.

5 And Mr. Butang Yao, who also goes by James, is the
6 vice president of technology of Kaidi. Okay.

7 So, once again, we look forward to presenting the case
8 to you in the next week and a half.

9 Thank you for your service.

10 And at this time I'm going to turn it over to
11 Mr. Rosenthal, who will give the opening statement on behalf of
12 Kaidi.

13 Thank you.

14 **MR. ROSENTHAL:** Good afternoon. As Mr. Hnath said, my
15 name is Brian Rosenthal, and I also represent Kaidi in this
16 case.

17 I want to echo, first, what Mr. Hnath said, and this
18 is on behalf of everyone. We thank you. This is a very
19 important case for our client. It's a very important case for
20 the other side.

21 We know that there's a lot of very important stuff
22 going on outside of this courthouse, and we know in this city
23 there's a lot of very important things going on. We really
24 appreciate you taking the time. Your attention is invaluable.

25 This is one of the only countries in the world that

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1 uses this jury system for issues like this. A lot of countries
2 will use specialized patent courts, technical-background judges
3 to deal with patent issues. This is one of those very few
4 countries that has a jury decide issues like this.

5 And the reason is that in this country, we value this
6 system. We value a system where decisions about disputes
7 between people, disputes between countries -- companies are
8 decided based on common sense, based on judgment, based on
9 perception of those in our community. And that's what this
10 jury system is all about.

11 So it's very, very important. And whatever the
12 outcome is, it's a very important process. And we thank you
13 for participating in this process.

14 This case is a patent case, as you've heard. A lot of
15 patent cases are somewhat difficult to understand in terms of
16 technology. You have patent cases that deal with, you know,
17 what's going on in your smartphone.

18 You can't see it. You can't feel it. You can't touch
19 it. You know there's something going on, and people will argue
20 about what's going on.

21 Some cases have to do with what's in the allergy
22 medications that we take, what chemicals are in there. We
23 can't see it and feel it. And it's very, very technical. Very
24 few people understand it.

25 This is not one of those patent cases. It's going to

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 be complicated. There's going to be a lot of technical
2 evidence. But, thankfully, this is a patent case that has to
3 deal with things that you can see and touch and feel and
4 perceive.

5 And you heard Judge Blake say very aptly: Use your
6 common sense. This is a perfect case for that. We're going to
7 be asking that you look at the evidence and apply your common
8 sense, apply your own perception and your own judgment.

9 I'm not going to be arguing anything to you until the
10 end of this case, but whatever I argue is not evidence. We
11 want you to look at the evidence and decide for yourself the
12 issues in this case.

13 This particular patent case, as you've heard a lot
14 about today, is about furniture. And in particular, it's about
15 a motor that is used in power reclining furniture. So we
16 thought it would be interesting to show you what we're talking
17 about.

18 This is a reclining chair. We've seen these types of
19 chairs before, at least in showrooms, if not in homes of
20 friends or family. And there's usually a button on the side of
21 the chair, makes it go up and down (indicating). Okay?

22 Now, we've modified this chair so we can take off some
23 of the pieces a little bit and show you exactly what's going on
24 underneath. If we take off these cushions, you'll see what
25 this case is all about.

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1 Inside this chair -- it's maybe a little difficult for
2 those in the back to see. If you need to stand up and take a
3 look, please do.

4 **THE COURT:** Standing up is fine. Or, counsel, if you
5 need to move around, that's fine.

6 **MR. ROSENTHAL:** I'm going to have -- I'm going to have
7 one of these I'm going to hold up in a second, but I just want
8 to show where it is in the chair.

9 Right in here you'll see a motor. Okay? That motor
10 is what causes this chair to recline (indicating).

11 See how it's attached to the frame of the chair?
12 Okay? That motor is what this case is all about.

13 I'm not going to refer to this anymore, so you can
14 feel free to sit down, if you'd like.

15 I'm going to instead pick up in my hand one of those
16 motors. So this is the motor that is sitting inside of that
17 chair. And this motor is made by my client, Kaidi. It's
18 called the 005. You heard Judge Blake refer to it earlier.

19 And what this motor does is it allows this white
20 slider to go up and down or, in the case of the chair, back and
21 forth in a line.

22 This device is called a linear actuator, the technical
23 name. You're going to hear a lot about linear actuators in
24 this case. That's what a linear actuator is. It's a motor
25 that causes linear motion. It causes motion in a straight

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 line, back and forth (indicating).

2 This is a linear actuator that's accused of
3 infringement in this case, and it's made by Kaidi.

4 So on the one hand it's going to be somewhat
5 technical, but on the other hand it's going to be something at
6 least that we can see.

7 And the ultimate issue in this case is going to be --
8 ah, does this motor infringe Okin's patent? That's the
9 question.

10 Now, what I'm going to submit to you is that you will
11 be able to answer that question using your own eyes. There's
12 going to be a lot of testimony.

13 You're going to hear fact witnesses talk about how
14 they developed this motor. You're going to hear from both
15 sides talking about their perception of how it does in the
16 marketplace. You're going to hear expert witnesses with
17 degrees in electrical engineering and mechanical engineering
18 and they're going to perform all kinds of tests, and I'll tell
19 you about those tests in a moment.

20 But at the end of the day, we don't think you need any
21 of that to make this decision, because at the end of the day,
22 this issue is such that you can see it with your own eyes. You
23 can just see whether this does what their patent requires or
24 not, and you'll be asked to make that decision based on what
25 you perceive.

Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 So one of the interesting things about this case is
2 that Kaidi is the plaintiff in this case. It's a little
3 strange. Usually the party that has a patent will sue someone
4 and say, "We think that you're using our technology." That's
5 not exactly how we got here today.

6 We have a timeline that gives you a little sense of
7 what happened here. We started selling -- Kaidi, my client,
8 started selling this 005 product back in 2012.

9 In April of 2013, Okin sued Kaidi. They didn't sue
10 Kaidi here. They sued in a different court. It's a
11 specialized court. It's called the International Trade
12 Commission, ITC.

13 And without going into the details of that case, that
14 case was resolved. But in the meantime, Kaidi filed a lawsuit
15 here in Maryland. And it filed this lawsuit because it was
16 concerned that Okin had filed this case and it was concerned
17 about what its customers might think about this product.

18 And it wanted to clear the air. It wanted to make it
19 absolutely clear to everyone in the market: There is no issue
20 with this drive. This drive does not use Okin's technology.

21 So they filed this case. That's why they're the
22 plaintiff. That's why I'm speaking to you first, because we
23 filed this case to clear the air, to make it very clear what's
24 going on here with this drive.

25 Now, even though we filed this case -- you heard from

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 the patent video. You heard from the judge -- Okin still bears
2 the burden of proof. Okin is the one that has to prove and
3 show to you that this drive, this motor, uses their patent.

4 That's still their burden. That's why they're going
5 to go first when it comes to evidence. They're going to put on
6 their experts, and then we'll respond to that. So they have to
7 prove it to you. We don't have to prove anything. They have
8 to prove that this product infringes their patent.

9 Now, there's one very important fact that Okin didn't
10 know before this case was filed, but we're going to be
11 demonstrating to you with testimony. And that is Kaidi learned
12 about this patent a long time before it designed this product,
13 and it made sure that the design that it chose did not use
14 their technology.

15 It actually -- and we're going to show you the
16 evidence that shows that. They actually found it. They looked
17 at it. And they said, We're going to make sure that whatever
18 we do, it's not going to use this technology.

19 They didn't know that when they filed this case. But
20 we're going to have hard evidence to show you, some of which
21 I'll show you right now, that's going to show that we knew
22 about this patent and we specifically made sure that we're not
23 using this technology.

24 Okay. Before I get into all of the merits and all of
25 the evidence, I want to first introduce our client, and both

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 parties, really.

2 I want to start with my client, Kaidi. Kaidi is a
3 Chinese company. They make all kinds of different motor
4 products. I have on the screen, which should be in front of
5 you, the various types of motors that they make.

6 They make these linear actuators, which are used in
7 beds. They're used in seats, couches. They make power
8 supplies for them. They make machine parts.

9 One of the things that Kaidi uses to distinguish
10 itself is they make everything in-house. They don't buy the
11 little pieces, the little screws and nuts and all the little
12 plastic pieces from someone else.

13 They make it all themselves so they can control the
14 quality; they can control the timing; they can control the
15 price. So they've invested a lot of money to do all that stuff
16 themselves, and they make all those.

17 They make these little handsets that you use to
18 control them (indicating).

19 They make circuit boards for more complicated pieces
20 of furniture. So they make all of these.

21 And among the things that they make are these linear
22 actuators.

23 Kaidi is located in Changzhou City, just outside of
24 Shanghai. Just so that we all know what we're talking about
25 here, China is shown up on the screen. And you see it's on the

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1 east coast of China. It's actually -- it's not that dissimilar
2 from Baltimore.

3 It's on the east coast, very similar climate, similar
4 latitude, a little bit bigger, right up on the water. They
5 have universities, a lot of universities there, business. They
6 have some shipping because they're right on the water. It's
7 very similar to Baltimore.

8 And it's in that city that Kaidi was founded and
9 Kaidi's factory is. This is a picture of Kaidi's factory and
10 some of their state-of-the-art facilities.

11 Kaidi puts a lot of money and resources into its
12 facilities for the following reason: You're going to hear from
13 those at Kaidi how important quality is, quality assurance.
14 They have more tests than anyone. They have more quality
15 assurance folks than anyone. They do a lot of work to make
16 sure that their products are the absolute best; that you can't
17 break them; you can't -- they won't wear down. Very important
18 to them.

19 In fact, one of the things you'll hear is when they're
20 approaching a new customer, like Ashley or whoever they're
21 trying to sell these motors to, whoever is making these chairs,
22 one of the first things they try to do is bring them out to the
23 factory in China.

24 Next time you're in China, come visit us. Take a look
25 at our factory. Look at our facilities.

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 They're very proud of those facilities. And you're
2 going to hear various witnesses talking about those.

3 Now, one of the witnesses you're going to hear from is
4 going to be Chairman Zhou, Rongqing Zhou. We call him
5 Chairman Zhou. You're going to hear a lot of people call him
6 Chairman Zhou. He's the chairman of the company.

7 Okay. And he's sitting right here. Mr. Hnath already
8 introduced him. He founded this company in 1992. He put his
9 life's savings into this company, and he started with 30 people
10 making motor parts.

11 And over the last 20-plus years, almost 25 years, he's
12 grown this company into a company that has 900 employees, 20 or
13 30 engineers. It is a very well-respected, very high-quality
14 player in this industry. And he's built that. And he's built
15 it with the values that he carried in with him.

16 You're going to hear from not only him, but those that
17 worked with him, how much he values hard work, how much he is
18 principled. And he makes his decisions, his business decisions
19 based on those principles.

20 Don't take my word for it. The evidence is going to
21 show you some of those decisions he made that's going to
22 demonstrate what kind of person Chairman Zhou is and what kind
23 of company he runs.

24 He didn't always have this fancy factory. He started
25 in 1992 in a pretty humble beginning, small buildings, making a

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 few different products. And he's grown it really with hard
2 work and perseverance into what it is today.

3 You're going to hear from five -- you may hear from
4 some more -- but it's principally five witnesses from our
5 company during this trial.

6 You're going to, of course, in the middle hear from
7 Chairman Zhou, as I've already talked about.

8 You're also going to hear from Leo Zhou.

9 Chairman Zhou would ordinarily be sitting up here at
10 counsel table as what's called the corporate representative.
11 Chairman Zhou doesn't speak any English. He's going to testify
12 through an interpreter. Okay? So we didn't think it was fair
13 really for him to sit here and not have interpretation.

14 We thought that Leo Zhou should sit here.

15 Leo runs the company day to day. He's the director.
16 He started as an intern several years ago. He went to school
17 in Canada. He does speak English fairly well, better than
18 Chairman Zhou, certainly. He's going to do his best to testify
19 in English. There might be a couple of points. But he'll be
20 sitting here the entire trial.

21 You're also -- and he's going to testify about what
22 this case means to this company, and he's going to testify
23 about some of the things that have happened after this case was
24 filed.

25 He's going to testify about how Kaidi markets to its

~~OPENING STATEMENT OF MR. ROSENTHAL~~

1 customers, how it distinguishes itself, why this product has
2 been so successful and the other products of Kaidi.

3 You're also going to hear from Mr. Yao, who's in the
4 audience.

5 Mr. Yao is the head of technology for Kaidi. So he's
6 going to have an important role to tell. He's going to tell
7 all about how this product was developed. He's going to talk
8 about some of the various earlier products, which I'll talk
9 about today. And he's going to talk about how they work.
10 That's really what this case is all about, is how they work.

11 You're going to hear from Mr. Zhu, who's on the top
12 right here. Mr. Zhu is not going to come to Baltimore. He's
13 in China. Most of the top managers of the company are here for
14 this entire trial. He's not able to be here, but he's still
15 going to testify through his deposition.

16 He testified during a deposition and it was recorded.
17 You're going to hear from him through the words that he gave
18 under oath. And he's going to testify about the design of some
19 of these products as well.

20 And, finally, you'll hear from Sean McCarthy. Sean
21 McCarthy is the head of the North American sales organization
22 at Kaidi. He was their first employee in North America. He
23 was hired at 24 years old.

24 His job was to introduce this Chinese company to the
25 U.S. market. For a 24-year-old, that's a challenge. And he

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1 did it the old-fashioned way. He beat down doors. He made
2 phone calls. He attended trade shows, he got meetings, and he
3 built his way into this industry.

4 And he's actually, from 2010, when he started, when
5 Kaidi was an unknown player in this industry, Kaidi is now at
6 the forefront and probably the most or one of the most
7 respected companies in this space. And that's very much due to
8 Sean McCarthy and what he's done. He'll testify about how
9 they've grown to that level.

10 I did want to make one note. This case is very
11 important to Chairman Zhou and to all of the witnesses. The
12 only one who's allowed to sit through the trial the whole time
13 is Leo Zhou. The reason is there's a rule; you're not allowed
14 to sit and watch the testimony of other people before you
15 testify.

16 So he's here. He cares very much about the case. But
17 he won't be sitting in the audience the entire time,
18 Chairman Zhou and the other witnesses. They're here. It's
19 very important to them. They will be here when they're allowed
20 to be. Okay?

21 Now, this is a patent case. We're going to talk about
22 the patent. I want to introduce this patent to you. So this
23 is a patent. The judge already told you we're going to refer
24 to it as the '144 patent. It's actually 5,927,144. That's the
25 number of the patent.

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1 They order them sequentially. That's how many patents
2 get issued by the U.S. Government. It's a lot.

3 Not all of them are the lightbulb like in the patent
4 video. Some of them are small improvements. In fact, many of
5 them are small improvements to what already existed. This is
6 one of the those patents, the evidence will show.

7 It was invented by a gentleman named Mr. Koch, a
8 German individual who filed -- he worked for Okin at the time,
9 and he filed a patent application in Germany and then later
10 brought that to the United States. And they filed in the
11 United States.

12 And this patent is now owned by Okin. That's why Okin
13 is the patentholder in this case. This is the original German
14 application in 1994. Mr. Koch filed for this application.
15 This is German, but it means linear actuator. And he disclosed
16 his patent at that time.

17 So you heard from the patent video and the judge that
18 what's important in a patent, or at least the most important
19 thing, is the claim. The claim defines -- it's that little
20 barbed-wire fence that excludes people from coming in. So the
21 claim is really what it's all about in a patent.

22 This claim defines what Okin has a right to do. They
23 don't have a right to exclude people from making any linear
24 actuator. They have a right to exclude people from making a
25 very specific type of linear actuator. Okay?

Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

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1 So we're going to go through what those requirements
2 are in this claim. There's a lot of words in this claim.
3 We're going to try to simplify it for you and focus on just the
4 things that matter. But just so that we're all looking at this
5 and understand how it all fits in, I'm going to go through some
6 of the basic elements.

7 The claim requires -- it's a drive for adjusting parts
8 of furniture that has a basic housing. This is just some, you
9 know, a housing like this (indicating).

10 And within the basic housing, there is a spindle. A
11 spindle is a mechanical engineering term for a long screw.

12 See that screw that's in there? That's a spindle
13 (indicating).

14 It's surrounded by a guide section. This is going to
15 be where the rubber meets the road in this particular case, the
16 guide section.

17 So what you see is -- for instance, this metal piece
18 here (indicating) is a guide section. Everybody agrees this is
19 a guide section.

20 There's a motor that's attached to the side. That's
21 this black piece here. There's a nut that goes on -- the way
22 these things work is there's actually a nut, you know, like a
23 nut and a bolt. There's a nut that goes on the spindle.

24 And as the motor turns -- and maybe I can even run
25 this.

1 As the motor turns, it turns the spindle (indicating),
2 and there's a nut inside of here that's moving up and down the
3 screw, and that nut is attached to this white piece called the
4 adjuster or the slider. They call it that because it slides up
5 and down.

6 And so that's how this motor works. That basic design
7 has been around for a long time. I'll tell you how long in a
8 moment. And there's also -- they talk about a slit between two
9 parts of the guide section.

10 The critical limitation, the critical part of this
11 device that everyone's going to be talking about for a long
12 time in this case is this part that I have highlighted here in
13 red. The guide section has two parts.

14 Remember the judge said "guide section" means a
15 two-part component that guides; right? It has to have two
16 parts.

17 This is what Mr. Koch invented. Everything else that
18 precedes it, the basic housing and all that other stuff,
19 there's going to be no dispute. There were linear actuators
20 before this patent that had all those elements. You're going
21 to hear everybody admit to that, everybody agree to that. This
22 is the only thing that was supposed to be new, two parts.
23 Okay?

24 So I mentioned that this is old technology; I wasn't
25 kidding. You're going to see patents from 1893 that have this

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1 technology, generally, linear actuators. They've been used in
2 furniture for over a hundred years. That's not new.

3 This is where we're going to be talking about, is this
4 two-piece guide. Okay?

5 There's also three other claims that are in the case.
6 I showed you Claim 1. There are 26, 27, and 28. They're also
7 at issue.

8 We're not going to talk very much about those in this
9 case. They don't add a whole lot. They just say that the
10 guide is metal or aluminum or extruded material. In this
11 industry, that's what all these guides are made of. So this
12 doesn't really add a whole lot. We're not going to be focused
13 on those.

14 But they are important and you're going to be asked
15 ultimately to determine whether this infringes those.

16 The one thing that's very important, if Kaidi's
17 product does not infringe Claim 1, it doesn't infringe these
18 claims either. That's the law. Because these are called
19 dependent claims, you have to meet everything that's in Claim 1
20 and it has to be metal and it has to be extruded. So if you
21 find that it doesn't even do what's in Claim 1, that's the end
22 of the inquiry. All these other claims are also not infringed.

23 Now, I said that the crux of this, what Mr. Koch
24 brought to the table, was this two-part guide. That's right in
25 the patent. That's what he said. I've highlighted a portion

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1 of this patent.

2 It says [reading]: In a drive of the kind mentioned
3 at the start -- now, that's these linear actuators that have
4 been around for a long time -- in that sort of a drive, his
5 task was solved in that the adjuster, the slider, is designed
6 as a slider surrounding the outside of the guide sections in a
7 form-fitting manner.

8 And then this is the important part I wanted to
9 emphasize.

10 [Reading]: The guide section being designed in two
11 parts.

12 That's what he's telling the world. He solved this
13 problem by using a guide section in two parts.

14 Now, you're not really going to hear a whole lot of
15 testimony about why that's an important distinction, why that's
16 an important piece. We're not really sure why that's so
17 important. But we do know he was telling the world it's
18 important to have two pieces.

19 Okay? I want to introduce Okin, our counterpart, the
20 party that we sued.

21 Okin is a German company. They have a U.S. subsidiary
22 that makes products in the United States as well. And to be
23 clear, Kaidi has a U.S. subsidiary as well. We -- Kaidi
24 imports its products from China. Okin has a German parent, a
25 U.S. subsidiary. They make their products, some of their

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1 products here.

2 Okin is a company that makes linear actuators, just
3 like Kaidi. They make a whole range of motors, just like
4 Kaidi.

5 They have not always been successful, even before
6 Kaidi was in the market; they went bankrupt in 2009. And they
7 were ultimately purchased by another company called
8 Phoenix Mecano in February of 2009.

9 But they're in this space. They were a very big
10 player in this space. They're now a somewhat smaller but still
11 very important player in this space of linear actuators used
12 for reclining seats.

13 Their flagship product in this particular space is
14 called the Okin BetaDrive. That's this. There's a picture on
15 the screen, but I'm holding it in my hand. Okay?

16 This product is what they've been using and selling
17 for over ten years. This is based on the 1994 patent
18 application that Mr. Koch applied for back when Cal Ripken was
19 still playing for the Orioles. This has been around for a long
20 time.

21 And what you can see is there's two pieces to the
22 guide section. That's exactly what Mr. Koch was talking about,
23 two pieces to the guide section. The slider goes around it.
24 It goes up and down, up and down (indicating). Okay?

25 That's Okin's BetaDrive. They have made other

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1 products. They have sold other products, but that's their
2 flagship product. They're gradually moving away from that type
3 of design from what's patented, but they are -- they certainly
4 are selling this product.

5 Now, I want to talk about Kaidi's development of the
6 products that are at issue in this case.

7 When Kaidi first decided to get into the market of
8 these linear actuators, Mr. Yao joined the company in 2006.
9 And it was among his responsibilities to start making this type
10 of linear actuator.

11 Now, the first type of linear actuator that they
12 designed they called the 001, was their first one. There were
13 some letters before it as well, but they call it the 001.

14 They tweaked it; it was the 002. They tweaked it
15 again; it was the 003. But it was the same basic design.

16 And in order to design it, they took a look at what
17 was out there in the market. And they looked, for instance, at
18 the Okin BetaDrive. And they said, well, this looks like a
19 good design.

20 They had absolutely no way to know that there was a
21 patent on this device. They decided to make something that
22 looked just like this. They used better materials. They
23 didn't make exactly the same thing, but they made something
24 similar.

25 Now, that is not the product that they sold. They

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1 never sold a product that has two parts. You're going to hear
2 them testify about that. And the evidence is going to be
3 uncontroverted that they never sold a product that looked just
4 like this.

5 Now, they only made samples. They made a bunch of
6 samples that they gave to customers as they were developing the
7 product. And while we don't have any samples left, because
8 they're old and we only had a few of them, we do have a piece
9 of a sample.

10 So this is actually one of the products Kaidi made,
11 and you can see it has two guide pieces. So that would seem to
12 be what Okin invented. That would be an issue if that were
13 what was at issue in this case. That's not what's at issue in
14 this case (indicating).

15 But they initially were going to make a design like
16 this.

17 Now, something very important happened. They had the
18 assembly line ready to go. They were about to run production
19 on the guide, this two-part guide. And one of their customers
20 who had received a sample said, Wait a minute. I think there
21 might be a patent on this device.

22 And so Kaidi, almost immediately, stopped production.
23 They said, We are not making that kind of product. And you're
24 going to see the evidence that shows exactly what happened.

25 I want to first show you -- this is the design

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1 document, the technical schematic, the drawing of the original
2 design. You see it has Guide Rail A and Guide Rail B, two
3 different guide rails, and those are highlighted here in
4 yellow.

5 But when they heard about the fact that there might be
6 a patent, they stopped and they looked online. They tried to
7 find what patent -- nobody told them what patent it was. They
8 had to go out and look for it. And so they actually looked for
9 it.

10 Now, some of the notebooks that Kaidi had used in
11 their day-to-day work cover this time period. We haven't been
12 able to find every notebook that existed way back when, but we
13 found a few of them.

14 And these notebooks show exactly what happened when
15 Kaidi found out about this patent. And it's a very -- I'm very
16 proud to tell you the story about what happened here with this
17 patent.

18 These are the notebooks of Mr. Yao and Mr. Zhu, who
19 you're going to hear from. And in these notebooks, it tells
20 the story of what happens -- what happened when they found out
21 about this patent.

22 So this is from Mr. Zhu's notebook. You see -- and
23 the date of this is March of 2008. The date's on a different
24 page. We'll show you in the notebook.

25 But on that date, they found the patent that they had

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1 been told might exist. It was this '144 patent.

2 So what did they do? Did they say, Okin hasn't
3 noticed it yet; we'll just keep making the product; we'll see
4 what we can do? Did they say, Oh, we'll just try to see how
5 long we can get away with it?

6 No. They had a meeting. They had a meeting on
7 May 27th, 2008, and this is recorded in these books -- I'll
8 show you in a moment -- with the chairman of the company,
9 Chairman Zhou, Mr. Zhu, and Mr. Yao and others.

10 And they all sat down and they said, What are we going
11 to do about this patent? It seems to say, Use a two-part
12 guide. That's exactly what's in our product. What are we
13 going to do?

14 And what happened at that meeting tells you everything
15 you need to know about the character of this company and the
16 type of company Chairman Zhou wanted to run. He said, Stop.
17 Do not sell this product. If it is close to their product,
18 their patent, don't sell it.

19 That's in the notebooks. You can see these notebooks.

20 Both Mr. Zhu's and Mr. Yao's notebooks record a
21 meeting from May 27, 2008. What you're looking at -- by the
22 way, is they're written in Chinese. We've all agreed on the
23 translation of the language.

24 So what you're looking at there in English is a
25 translation of what they wrote. Those are their words

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1 underneath it. And everybody agrees that this is the right
2 translation.

3 So on May 27th, you see on the right Mr. Zhu says,
4 "Linear actuator involves patent issues. Cease production."

5 That was the instruction from Chairman Zhou: Cease
6 production.

7 Mr. Yao's notebook reflects the same thing: Cease
8 deliveries. And they did. They never sold a single device
9 that had a two-part guide. They had to throw a lot of material
10 away. They had like 300 samples. And you're going to hear
11 they just had to scrap it. It wasn't useful anymore. They had
12 to get rid of it.

13 And so they decided, we got to use a different design.

14 Now, you heard in the patent video there was a
15 discussion about what happens to patents when they've been out
16 for a long time, when they expire. They become free.

17 And so they had a very good idea. They said, All
18 right. We want to get into this market. We know Okin has a
19 patent on a two-part guide, so let's design something that's
20 free. Let's design something using technology that's been out
21 there forever. We want to make sure that we're not using
22 anybody's patents.

23 And so they drew right here -- this is Mr. Zhu's
24 notebook, again, from March of two thousand -- May, I should
25 say, of 2008. He drew a one-piece guide. This was going to be

1 their new design.

2 And the way they found this design is they actually
3 looked for expired patents. They found a 1987 expired German
4 patent that uses a one-piece guide. You see, rather than
5 having these two pieces with a slit in between them, they found
6 one that's a design that has just a single piece, all
7 highlighted there in yellow.

8 And that's exactly what Mr. Zhu drew in his book.
9 We've just turned it around so it's -- we've turned it upside
10 down, so you can compare it.

11 But he drew exactly that. And that's the one-piece
12 guide design that they came up with. And they called it --
13 because they were on 003 at the time, they called it the 004.

14 So we made a little animation here to show you what
15 we're talking about. This is how the Okin patent describes its
16 invention. This is the '144 patent.

17 So if we run this, what you see is the slider is
18 guided by this two-part guide. There's two different pieces.
19 What Kaidi said is -- let's go to the next slide -- okay, we're
20 going to use this new design. It's called the 004, one piece
21 only, and see what happens.

22 As the slider comes along the guide, there's only one
23 piece doing the guiding. You see that's all one metal piece
24 going all the way around.

25 And this is not disputed. Here's a piece of the 004

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1 so you can see the difference (indicating). See, here's the
2 003, two pieces (indicating). Here's the 004, one piece
3 (indicating).

4 Okin will agree this does not infringe. This does not
5 use their technology. One does not equal two. It's easy.

6 So that's not the end of the story; otherwise, we
7 wouldn't be here.

8 We developed a new product, and it's that new product
9 they say now infringes their patent. Okay? That new product
10 is called the 005.

11 Now, what happened is that when they made the 004, one
12 of the things that you can notice here is that this is how it
13 sits. There's an opening here on the bottom (indicating).
14 This sits under the chair.

15 What you now see is there's a little hole here
16 (indicating) that grease can drip out of. Okay? That's a
17 problem. You put these in your carpet, and all of a sudden
18 you've got grease drippings on your carpet. Right?

19 So they had feedback from customers. This was a good
20 product. They sell this product even today. But some of their
21 customers said, You know, we're a little worried about the
22 grease, and so can you do anything about that?

23 The other thing is, it uses a lot of material. And
24 Kaidi's always innovating. They said, Let's try to make this a
25 little smaller.

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1 So they actually developed what's called the 005
2 product. And what it is, is it uses a smaller guide. The
3 guide has now shrunk to be much smaller. It's still one piece,
4 one metal piece. And the slider surrounds that. And that's
5 what's used to guide. And we have an animation. But if we can
6 run it, you see it's still one piece just like the 004. It's
7 just one piece. But here's the problem . . .

8 If you could pause that, Mr. Eaton.

9 Here's the problem that they then encountered. Now
10 that they've made the material smaller, they've got a real
11 problem. See, the spindle is now completely exposed, the
12 screw. So now you've got all this greasy material, which is --
13 I already got some on my hands. It's quite greasy and drips on
14 the floor.

15 And you have customers like Ashley saying, Well, geez,
16 what if people have shag carpet? Maybe it will get caught as
17 it goes back and forth. It might get -- the carpet might get
18 caught in there. Children's hands might go underneath the
19 chair and get caught in here while it's moving. Becomes
20 dangerous.

21 It also doesn't look very nice.

22 So what they decided to do at Kaidi was they said,
23 Okay, let's put a cover on it. We'll cover it up. That will
24 solve all these problems. It will catch the grease so the
25 grease can just drip onto here.

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1 And they just designed a cover that they can just put
2 right in here, and it solves those problems. Now it's no
3 longer as ugly. It's not as exposed. You're not going to get
4 people's hands caught in it.

5 So we put a cover on it. This cover doesn't do
6 anything functional other than what I just described. You'll
7 hear evidence to that effect.

8 You'll see the slider does exactly the same thing with
9 the cover and without the cover. There's no difference
10 (indicating). This is doing the guiding. Right?

11 But now Okin has an argument. Now Okin is saying,
12 Well, even though this is the guide, this is the thing that
13 slides it up and down, we're going to say this is a second part
14 of your guide. And this somehow participates in guiding this
15 along. Even though you can see it works exactly the same
16 without this cover, they say this is, nonetheless, a guide.
17 That's what this case is all about.

18 So I said at the beginning, you're going to be able to
19 see with your own eyes. You're not going to need experts and
20 all this other evidence to try to see whether this infringes or
21 not.

22 The question you're going to be asked is: Can Okin
23 prove that this helps to guide this, that this cover guides
24 this slider? That's what you're going to hear evidence about.

25 So if we can continue this animation, the question is:

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1 Just because we put this cover on here, have we now somehow put
2 an additional guide piece on, such that there's now a two-piece
3 guide?

4 It might seem a little strange to be arguing over, you
5 know, is this a guide or not? But that's what the patent
6 claims. The patent claims a two-piece guide. We have a
7 one-piece guide. That's what's going to be debated here.

8 So we started developing this product in 2010, and we
9 introduced it in January of 2012; so not only are we going to
10 show you how this product works when you look at it, so you can
11 see it with your own eyes, you're going to hear it from the
12 people that developed it.

13 You're going to hear from Mr. Yao, who was the head of
14 engineering when this was developed. And he's going to tell
15 you what this spindle cover does and why it was put in. It
16 doesn't do anything with respect to guiding, he will testify.
17 It is solely there for decoration, and it's solely there to
18 catch the grease. If you take it out, doesn't make a
19 difference.

20 Mr. Zhu will say the same thing. Mr. Zhu, who I told
21 you, he's only going to testify by deposition. He's not here.
22 But you'll hear his testimony. And he says, again, this
23 doesn't do anything in guiding.

24 Guiding means -- and you'll hear from the experts on
25 this. The experts will agree that guiding means helping to

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1 direct something along its intended path. That's how it's
2 understood. This doesn't do anything to help it go along its
3 path, this piece (indicating).

4 And that's what Mr. Zhu will say. What Mr. Zhu will
5 say is the only thing it could do potentially in theory is, I
6 guess it could stop it from going down. It could stop it from
7 falling onto the ground if this guide rail weren't here, but
8 that's not pushing it along its intended path.

9 So Mr. Zhu will testify about that.

10 Now, one of the things that the other side is going to
11 focus on is not what this does, because that doesn't really
12 help them. They're going to focus on a technical document.
13 There's actually a handful of technical documents.

14 When the 005 product was made, someone decided it
15 would be a good idea to use the same terminology that had been
16 used from the old product. Not a great idea. The old product
17 had Guide Rail A and Guide Rail B, two guides (indicating).

18 The assembly line workers all thought about Guide Rail
19 A and Guide Rail B. Those are the two components I'm putting
20 together. They're both guide rails.

21 So when they designed a product that had a guide and a
22 cover, they thought, Well, wouldn't it be easy for the assembly
23 workers -- we'll just call it Guide Rail A and Guide Rail B.

24 And so this is what Okin is going to latch onto. This
25 is what they're going to show you. They're going to say, Oh,

1 their document says it's a guide.

2 This case is not about what something is called. It's
3 about what something does. Does it do this function? That's
4 the question. That's what's claimed.

5 So they're going to focus on this.

6 What -- what we're going to show you is the history of
7 this naming is actually exactly consistent with what Kaidi is
8 going to be telling you and what their witnesses are going to
9 be telling you; and that is when this document was made that
10 called this Guide Rail A, Mr. Yao noticed that.

11 In 2011, years ago, before this lawsuit was ever filed
12 and he went to Mr. Zhu and he said, This is not the right name
13 for this component. This should be called a cover. It's not a
14 guide. It doesn't do any guiding. Long before Okin ever came
15 on the scene and said that we were infringing.

16 And Mr. Zhu said, Well, I agree, but we can't really
17 do anything about it. The thing's already in mass production.
18 It's been -- it's being sold all around the world and it's just
19 the name, so why are we going to change it? So they didn't.

20 But when they -- when Kaidi developed its
21 next-generation product, called the 007, they did fix the name,
22 again, before this lawsuit was ever filed.

23 Kaidi introduced a new product. And this is one of
24 the products they still sell today, along with the 005. This
25 is called the 007.

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1 There was also an 006. It wasn't sold in the U.S. So
2 we don't talk about it, just because it's not that relevant to
3 this case.

4 But this is the 007. It was made in the U.S. and
5 is -- sorry, sold in the U.S. and it is today. It looks very
6 similar to the 005. It has some improvements in it. One of
7 the improvements is the spindle cover is no longer metal. Now
8 it's plastic. But it does exactly the same thing.

9 It sits there. It provides decoration. It catches
10 the grease. It doesn't provide any function in the guiding,
11 it's, you know, very, very difficult to see the difference
12 between these two, other than the fact that it's metal.

13 You see here, this is the 005, (indicating) the 007
14 (indicating). This one's plastic; this one's metal. That's
15 the difference. There are other differences in the products,
16 but that's the difference of the spindle cover.

17 And so, again, the original drawings for the 007
18 called that a guide rail. This time Mr. Yao was able to
19 correct it before it ever went to manufacturing.

20 And so when you see the technical drawings which were
21 dated -- it's hard to read this. But on the left there it says
22 "2013, March 28th." That's before any lawsuit was filed,
23 before any allegation of infringement. That piece is called
24 the spindle cover. Before this lawsuit was ever filed.

25 So this whole argument that they are going to raise

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1 about "What do our documents say?" -- we are going to show you
2 the documents that show that long before this lawsuit, they
3 realized that it should be called the spindle cover and that
4 they actually have documents that call it a spindle cover.

5 But at the end of the day, that's a sideshow. That's
6 not what the case is about. The case is about what the product
7 does.

8 So while we think you can see it, we also hired an
9 expert, world-class expert in electrical engineering, in
10 mechanical engineering, who's very familiar with these
11 products, with linear actuators; and we asked him, Can you
12 devise some tests and come up with an opinion about whether
13 this thing is doing any guiding, whether this spindle cover is
14 part of a two-piece guide or not?

15 So Dr. Howard, who's sitting in the front row, is
16 going to testify. He has a lot of degrees. He has a Ph.D. in
17 Mechanical Engineering. He has a Master's of Mechanical
18 Engineering, a Bachelor's of Electrical Engineering. He's even
19 got an MBA. He's a Professional Engineer. He knows what he's
20 doing. He's a very, very precise guy.

21 And he's going to testify about all the tests that
22 he's done, and he's done a lot of them. The first thing he did
23 is he did what I did. He just looked at the thing run, with
24 and without the spindle cover.

25 And he saw what we all saw, that it doesn't make a

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1 difference in the operation of the product. It's not doing
2 anything with respect to guiding.

3 But that's not enough for Dr. Howard. He's also going
4 to show you that he used a laser machine that can detect to
5 pinpoint accuracy, millimeters or maybe even less than a
6 millimeter accuracy, the position of objects. And he used that
7 device to very, very precisely measure this slider as it goes
8 along, 'cause sometimes the eye can deceive us.

9 So he wanted to make sure the eye was not deceiving
10 him, and he measured the motion of this slider as it moves
11 along the track. With and without the spindle cover, it's the
12 same (indicating). Spindle cover doesn't make a difference.

13 That's not all. He also responded to -- remember,
14 Okin has the burden here, so Okin hired an expert. And what
15 they did is they -- their expert came up with a test that tries
16 to measure forces that are working on the spindle cover, as the
17 spindle cover -- as the slider moves back and forth
18 (indicating), can we measure whether there's any force on this
19 device? Is it being stressed in any way? 'Cause if
20 something's pressing on it, it's pressing back and it's helping
21 to guide. That's not a bad way to approach the problem.

22 Only problem is his test setup. He looked at it in a
23 device like this where, you know, the pressure of the chair is
24 pushing down on the motor.

25 And so Dr. Howard was very intrigued by the results of

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1 Mr. Babcock's test, their expert. And he said, This is
2 interesting to me because it looks like you've found that there
3 are some forces on this slider.

4 But what he found is the reason for that is because
5 the chair is pushing down on the slider; and, therefore, it's
6 pushing down on the cover. And so he's saying the cover has
7 some forces acting on it, but that's because of the setup.

8 So what Mr. -- what Dr. Howard was able to do, if I
9 have -- well, I think I can just show you.

10 What Dr. Howard did is he used a different
11 configuration. This is another chair frame. This just sits
12 under a chair. We didn't bring the whole other chair in, but
13 this is the bottom part of the chair. It's a different type of
14 chair. It's a rocker chair. Okay?

15 And in this configuration, the way that this is
16 configured is it's able to isolate the forces that are just
17 being driven by the motor. And the pressure of the chair --
18 you see there's nothing attached from above onto the slider.

19 So you're not going to -- the test is not going to get
20 confused by the weight of the chair. And the only thing that
21 you would measure -- if you measured the force that's acting on
22 this cover, the only thing that you would be measuring is the
23 guiding forces.

24 And so Dr. Howard ran that experiment. So he
25 basically used Mr. Babcock's methodology. And he said, Well,

1 let's use that. Let's do it in the right way. And he set up a
2 test methodology, and he put weights on it to simulate someone
3 sitting on the chair.

4 And what do you see right there? Dr. Howard is going
5 to talk about it. Zero. For the entire time there was zero
6 force acting on this spindle cover, nothing, confirming what he
7 will tell you, which is this does nothing. It's a piece of
8 metal that's there to catch grease and to please the eye, but
9 it does not do anything with respect to guiding. That's what
10 he'll tell you.

11 Now, the other thing that he'll say is that he's
12 looked at the prior art in this case. Now, you remember in the
13 patent video, Judge Fogel was talking about the fact that
14 patents are granted through this process in the Patent Office
15 where the patent examiner looks at prior art and decides
16 whether or not to grant the patent.

17 That happened in this case, and the Patent Office
18 granted this patent. And we're not saying the Patent Office
19 made a mistake. That's not our argument.

20 But what Dr. Howard will say is that if somehow you
21 consider this to be a second guide piece instead of what it
22 really is, a cover, well, you could say the same thing about
23 the prior art, what existed before. The Patent Office never
24 would have granted this patent if that's the interpretation.
25 That's what he's going to tell you.

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1 So what he's going to say is this -- there's a
2 reference by a Japanese manufacturing company that made
3 actuators that was before Mr. Koch's filing of his patent in
4 1994. And the Patent Office looked at this reference and
5 decided that the two-piece guide was different than this,
6 because this doesn't disclose a two-piece guide.

7 But when you look at Takei, just like the 005, it has
8 a one-piece guide. That's what we've highlighted here in
9 green. But it also has a cover, which we've highlighted in
10 yellow, just like the 005.

11 And so if the claims, if the word "guide," the
12 "two-piece guide" is twisted and stretched so that it can cover
13 something where there's a one-piece guide with a cover, well,
14 you could say the same thing about this prior art and the
15 Patent Office never would have issued this patent.

16 And so what we would say is if you're going to take
17 that interpretation, the claim, Claim 1, should be held
18 invalid. That's what Dr. Howard will tell you his opinion is.

19 The other thing that Okin's expert, Mr. Babcock, does
20 is he -- he -- it's an interesting test. He takes a Magic
21 Marker or a whiteboard marker, and he draws along the side of
22 the slider. And he says, Okay, let's see this in action. I'm
23 going to draw on it. I'm going to put it back in place. And
24 then he runs it. And what he finds is when he runs it, the
25 slider scrapes some of the Magic Marker off.

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1 So he says, Well, it must be guiding.

2 Dr. Howard will say, No. That means it must be
3 touching. Touching is not guiding, he'll say.

4 And there's nothing in the claim that talks about
5 touching. It doesn't say "a guide section that touches." It
6 says "a guide section." And what you'll hear is that means
7 that directs something along an intended path. That's not
8 touching.

9 There's an analogy that's pretty apt here. It's very
10 similar to the question that you're being asked, which is if
11 you take a train that's pulling into a station, okay, and the
12 train comes into the station and stops and you ask the
13 question, "What's guiding that train?" Well, we all know
14 what's guiding the train. It's the train tracks.

15 Is the platform that sits very close to the train
16 guiding the train? And we all know the answer to that
17 question. It's, no, it's not. It's very close.

18 If you reached out your hand and touched the train as
19 it went by, would you be guiding the train? No.

20 If you scrape some Magic Marker off of it, would you
21 be guiding the train? No.

22 Now, the question that you'll be asked to answer in
23 this case is: Are Mr. Babcock's tests that show that there is
24 contact or can be contact between the slider and the cover, is
25 that enough to prove that this is doing the guiding, in view of

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1 all the other evidence?

2 I cannot answer that question for you. Dr. Howard
3 can't. Mr. Babcock can't. The other side's lawyers can't.
4 That's for you to use your common sense and your perception to
5 decide the answer to that question.

6 **THE COURT:** I'm sure you're getting close, but you've
7 got about another five minutes.

8 **MR. ROSENTHAL:** Thank you. That's perfect. Thank
9 you, Your Honor.

10 Now, I do want to talk to you about the lawsuit and
11 why we're here in those last five minutes.

12 We made this product in 2012, sold it in the
13 United States. And then this lawsuit was filed against us, and
14 then we sued. The reason that we sued -- I talked about this.
15 The reason that we launched this lawsuit and filed this case is
16 because we wanted to clear the air.

17 We want to establish once and for all that this
18 product does not infringe. We want to make sure our
19 customers -- this is not a big market, there's only a handful
20 of furniture makers that use this kind of stuff. If one of
21 these customers gets skittish, that's a huge deal for our
22 company.

23 And we want to make sure they're not skittish. We
24 want to make sure they have absolute comfort that this product
25 can be used in their devices. It doesn't infringe anybody's

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1 intellectual property.

2 Okin has been losing their position in the market.
3 They haven't been able to compete. You're going to hear
4 evidence that they aren't responsive enough. They don't have
5 great service. They're selling the same old products.

6 They're now selling some different products, but they
7 were late. Other companies have passed them by, and they're
8 losing big customers. And they can't compete in the market, or
9 at least they don't want to compete in the ways that they need
10 to. And so they filed this case to fight it out in the
11 courtroom rather than in the market.

12 Kaidi wants to fight this in the market. Kaidi wants
13 to offer a better product. You're going to hear that they want
14 to offer better service, that they do offer better service.
15 And at the end of the day, we'll be asking whether they're
16 allowed to do that.

17 We do want to just talk briefly about damages. I want
18 to be clear. Our position is and always will be in this case
19 that there should be no damages. If the product doesn't
20 infringe, there are no damages, period.

21 But they do offer a damages case. So we have
22 Dr. Varner, who has a lot of credentials. He's an expert in
23 licensing. Nobody's going to question his qualifications and
24 licensing, and he'll testify about what the right damages are.
25 He'll respond to their damages case.

Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

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1 And I want to leave with this one last point, which is
2 back to the Chairman.

3 You might ask in a case like this: Why are we here at
4 trial? A lot of cases get settled out of court. Not very many
5 cases go to trial. Very, very few cases go to trial,
6 especially patent cases. Why are we here? Why didn't
7 Chairman Zhou just make them an offer, pay them some money so
8 they can keep going on?

9 The answer is the same reason that he decided to stop
10 production on this two-piece guide. It's principle. It's
11 principle.

12 He'll tell you all about it. He'll tell you the
13 reason that he's here, the reason he's not going to pay is
14 because he didn't take someone else's technology. He's not
15 going to pay for something he didn't take, plain and simple.

16 He's not going to take something that isn't his, and
17 he's not going to pay for something he didn't take. It's the
18 same principle. That's why we're here.

19 So I just want to thank you again. This is going to
20 be a long week and a half. It's going to be long days. It's
21 hard to take everything in. I don't envy you.

22 It's a lot of people telling you different things.
23 And everybody tells you, This is the way it is; and the other
24 person says, This is the way it is. It's hard to know what's
25 right and what's wrong. But just trust your judgment.

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1 You came in here with your common sense. You're going
2 to leave with your common sense. That's what you're going to
3 apply to the facts. That's all we're going to ask you to do.

4 Use your eyes. Use your head. Try to figure out, you
5 know, who you believe and who makes more sense.

6 It's not about people telling the truth and lying.
7 It's just what's -- what's credible to you.

8 Thank you very much. It's a very important process.
9 I will have the opportunity again to talk to you at the end of
10 the case to kind of summarize where I think we are at the end
11 of the case. But until then, good luck and thank you.

12 **THE COURT:** Thank you.

13 Thank you, Mr. Rosenthal.

14 **MR. JOHNSON:** Your Honor, do we have a moment to
15 switch out the devices and the chair?

16 **THE COURT:** Yes, you do. Can you just possibly go
17 ahead and do that.

18 If you all want to stand up, that's a good idea.
19 Stretch.

20 (Pause.)

21 **THE COURT:** All right.

22 **MR. JOHNSON:** May it please the Court, ladies and
23 gentlemen of the jury, like Mr. Rosenthal, I also want to thank
24 you for your service. Like he said, this is really important
25 to the companies that are having this patent infringement

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1 dispute.

2 And we understand that there's other important things
3 in your lives and I get that. And we will do our best to try
4 to put this case on efficiently. I do agree with
5 Mr. Rosenthal: This is a case of common sense, and it's one of
6 perception. All right? And we think that if you apply that
7 common sense and perception to the case here, it should be
8 something that will reach the correct judgment.

9 Now, like Mr. Rosenthal, I would also like to
10 introduce the representatives from the Okin side.

11 My name is John Johnson, and I'm with
12 Fish & Richardson. And I want to first start with our
13 corporate representative. Our corporate representative is
14 Mr. Greg Bowen.

15 Greg, can you stand up.

16 Greg's here from Shannon, Mississippi. And he's the
17 general manager of the Okin America manufacturing plant in
18 Mississippi. He'll be here throughout this trial, sitting
19 right over there. And he also will be testifying and telling
20 you about the manufacturing plant and the making of the
21 BetaDrive that's at issue in this case.

22 In addition, I'd like to introduce you to some of our
23 other executives who have come out here for this trial. You
24 can see in the back, if you can stand up, Max Kleinle.

25 Max Kleinle is the head of the DewertOkin company.

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1 And he is here from Germany, and he also will be testifying
2 during this trial. You'll be able to hear from him firsthand
3 about his experiences in this market and with respect to other
4 relevant issues.

5 Philip Brown, would you please stand.

6 He is the president of Okin America, Inc. He's
7 actually out of Frederick, Maryland. He travels down to
8 Shannon from time to time and works with Greg, but he is the
9 president and CEO of Okin America, another party in this case.

10 I wanted to introduce you to them so you can see them
11 firsthand as well.

12 The legal team. We also have our legal team here, and
13 I'd like to introduce you to the Okin team:

14 Frank Gorman, co-counsel. Frank.

15 James Jeffcoat in the back, he's another attorney
16 that's on our team.

17 Michael Autuoro, he's there as well.

18 And Mike Miller, he's the guy -- he's the wizard on
19 our side who's going to be presenting the documents to you.
20 And you'll see in the PowerPoint various things and animations.
21 He's the guy that will run the show.

22 And there will be other people coming in and out for
23 some assistance. So don't fret when you see some people
24 handing documents off.

25 I want to start with this patent, which is what is at

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1 issue here. Okay? And it is the 5,927,144 Patent. It's the
2 patent that was granted by the Patent Office, you know, not --
3 it's an older patent. And it's coming closer to the end of its
4 life. All right?

5 And I want to start with a summary and tell you that
6 Okin owns this patent, as Mr. Rosenthal stated. So there's no
7 dispute about that, the '144 patent.

8 Okay. Now, we will present evidence that Kaidi, with
9 its 005 product, infringes this patent. And there's one simple
10 issue that Mr. Rosenthal identified, and that's whether there's
11 a two-part guide section. And we'll go through that.

12 And next we'll prove -- the evidence will prove that
13 Kaidi owes Okin royalty payments for this infringement.

14 I don't really need to do the slide. I think you saw
15 a demonstration already. You saw the actual seat in operation.
16 But I wanted to demonstrate visually that the drive -- these
17 drives, actually, fit underneath the seat and you can see it.

18 The patent is not associated with an entire chair.
19 The patent is associated with a linear actuator. I think
20 Mr. Rosenthal called it a motor. Actually, the motor's right
21 here. This is a linear actuator (indicating). And this linear
22 actuator fits underneath the chair, and it will move objects
23 and the chair, namely, the back and the footrest of the chair.

24 So where did this patent come from? It came from the
25 Constitution of the United States. And Congress was given

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1 power to promote the progress of science and to grant for
2 limited times patent rights, exclusive rights.

3 You can see that on the screen. And you saw the
4 patent video where the patent property right was defined. A
5 patent right, it's a grant, an official grant by the United
6 States Government. And it gives the right to stop others from
7 making, stop others from using, stop others from selling or
8 offering for sale the invention that is -- and this is
9 important -- claimed in the patent. Okay. Claimed in the
10 patent.

11 Not claimed what is in a figure. Not claimed in what
12 is in a product. Claimed in the patent.

13 The judge explained to you that there are four claims
14 at issue in this case: Claim 1, Claim 26, Claim 27, and
15 Claim 28. And that language is what governs, not figures, not
16 other products, not a device like this (indicating). Not any
17 of these devices, okay, these older devices. It's the language
18 in the claim.

19 Now, with respect to this patent property right, the
20 evidence will show that Kaidi makes and sells the linear
21 actuator called the KDPT005. We just call it the 005, and it
22 makes it without Okin's permission.

23 The patent term, you heard from the video that the
24 patent lasts for a specific period of time. Usually it's
25 20 years from the date that the application is filed by the

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1 inventor.

2 Here the U.S. application date is October 12th, 1995,
3 and the expiration date is not so far off, October 12th, 2015.

4 Okay. But despite that fact of expiration, incoming
5 expiration, this patent still has value. It has value until it
6 expires. And after it expires, it's free to be used. We don't
7 dispute that whatsoever.

8 Mr. Rosenthal explained how Kaidi looked at some
9 German reference and thought that it was free to use that, to
10 take what was taught in that particular reference.

11 After the term of this patent, that will be true here.
12 But up until that time -- and the evidence will show, up until
13 that time a royalty will be owed.

14 Now, the bargain. The patent system is based on a
15 bargain, so in return "from" the right to prevent others and
16 stop others from doing things -- like making, using, and
17 selling -- the inventor must disclose or enhance the public
18 knowledge. Inventor must tell the public about the invention,
19 and that's what the language in the patent is. The figures,
20 all of this information, must be sufficient to tell the public
21 how to make it and how to use it.

22 And here the '144 patent, this patent enhanced the
23 public knowledge with a new and a novel linear actuator device
24 for a recliner chair.

25 The royalty payment. You heard from the video that a

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1 patent in many ways is like a deed of property. It grants the
2 owner the right to keep people off of the property or to charge
3 a fee for it. It's like rent for using it.

4 And the evidence here will show that Kaidi has sold
5 millions of dollars' worth of the 005 without permission, and
6 the evidence will show that Kaidi owes a royalty fee. It owes
7 rent for making and using and selling that, Okin's invention.

8 Let me quickly explain some about DewertOkin and
9 Okin America.

10 These companies are linear actuator technology
11 companies. Make linear actuators for beds, chairs, and other
12 furniture applications. As I said, Okin America, Inc., has its
13 headquarters in Frederick, Maryland, and it has a manufacturing
14 plant in Shannon, Mississippi.

15 DewertOkin has its headquarters in Germany. For
16 decades they've been making linear actuators, a leader in this
17 field, a true leader in this field. Some of Okin's linear
18 actuator offerings you can see here.

19 Right in the middle is the BetaDrive. This is the
20 drive that was a breakthrough in the industry. And this linear
21 actuator, the BetaDrive, is something that came out of this
22 patent; right? This is what resulted from this invention, the
23 '144 invention. And it still has legs. It's still selling
24 quite well. Okay? 20 years into it, it is selling very well.
25 It has great success in the marketplace. And it has had great

~~OPENING STATEMENT OF MR. JOHNSON~~

1 success in the marketplace, as the evidence will show.

2 Changzhou Kaidi and Kaidi, LLC, you heard about them.
3 I won't say much except for, you know, to note that they are
4 headquartered and they have their manufacturing operations in
5 China. They do have a registered LLC in Michigan related to
6 their product sales in the United States.

7 I do want to note, though, that Mr. Rosenthal did
8 explain this, that they started their efforts to enter the
9 linear actuator business in 2006. Okay? In 2006.

10 We should talk a little bit more about that, because
11 it's important in the overall story with respect to how they
12 got to their device and our position and our evidence that will
13 show that there's a two-part guide section.

14 Okay. Let's get back to the Okin '144 patent, back to
15 the power recliner again.

16 And I want to highlight that. This actuator, okay,
17 these linear actuators are designed not to be held in the hand,
18 not to be designed so that you can take off one of the rails
19 and operate it in front of a jury.

20 They're designed actually as workhorses to sit
21 underneath a chair so that a person can actually sit on the
22 chair and really enjoy power recline without having to recline
23 with the hand (indicating).

24 The remote-controlled powered recliners. Okay. So,
25 you know, tonight you go home and you want to watch your

~~OPENING STATEMENT OF MR. JOHNSON~~

1 favorite show and maybe you want to watch the game; you can do
2 this remotely.

3 And they have to be designed to absorb weight. Like
4 me, if I were to sit down on this particular chair -- I
5 wouldn't do it now because it doesn't have the cushions. But
6 with this actuator in there, it has to be designed to absorb a
7 load, and that's important. It's important to keep in mind as
8 we discuss issues relating to guiding and whether rails
9 participate in guiding.

10 And, again, it's all about common sense and
11 perception.

12 Now, we touched on this subject, and I'll briefly go
13 over it again. The patent derived from the work of a
14 Mr. Dietmar Koch, German man, and he invented his work in the
15 mid '90s.

16 He first applied for a patent application in Germany.
17 Later on he filed for international protection. And you can
18 see right on the screen there's a reference to PCT. That's the
19 Patent Cooperation Treaty.

20 The Patent Cooperation Treaty is a treaty that allows
21 people who are looking to get international patent protection
22 to file through that treaty. He did that. And, ultimately,
23 this patent was issued, the '144 patent in the United States.

24 This linear actuator has great benefit, and sometimes
25 the benefit can be the simplicity of the design. And you can

~~OPENING STATEMENT OF MR. JOHNSON~~

1 see right here I just pulled out some of the language from the
2 patent, and you have the patent in your binders.

3 But the task of this invention was to create a compact
4 drive. It was a breakthrough. This is something that didn't
5 exist in the marketplace before for this particular market.
6 It's a compact drive, and it is inexpensive to make. And it's
7 easy to manufacture and put together.

8 And, again, the solution it created is -- you can see
9 it -- a particular compact drive of simple design. And that's
10 important, important to keep in mind.

11 I agree very much with the statement that the claim is
12 the critical aspect of this case. It's the patent claim. It's
13 not comparing the BetaDrive (indicating) to the 005
14 (indicating). It's not comparing figures to the 005. It's
15 about the patent claim. Okay?

16 And this is a legal statement of what the boundaries
17 of the property are. All right? And this claim has a lot of
18 information in it.

19 Now, I want to break it down just like Mr. Rosenthal
20 did.

21 And you can see there's this preamble that starts with
22 a drive for adjusting parts of seating and reclining furniture.
23 And it includes -- it includes a basic housing. Okay?

24 And there's no dispute on most of these elements. It
25 includes a rotating spindle. And you can see the rotating

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1 spindle in there, as Mr. Rosenthal showed you.

2 It includes a nut. There's going to be a nut that's
3 going to be associated with the spindle. And a spindle, by the
4 way, is a screw. That's what it is. It's a screw, and you
5 have a nut that's associated with that screw.

6 There's a motor. Right there on the side, it's a
7 motor.

8 There's an accepting device. The accepting device is
9 right here on the side (indicating), and it will fit into the
10 frame. Right? And this is all part of the invention. All of
11 these elements are part of the invention.

12 And there is a two-part guide section. And here you
13 can see that two-part guide section quite clearly, one, two
14 (indicating).

15 There's a slit. There's a slit on both sides of the
16 two-part guide section, fitting through both sides.

17 There's a slider. Sometimes you might hear it be
18 called a -- an adjuster. Sometimes you might hear it be called
19 a moving block. This is the slider.

20 And as Mr. Rosenthal showed you, the slider moves back
21 and forth. And that's what affects the movement ultimately,
22 like the footrest. It will move the footrest or it will move
23 the back of the chair.

24 There's also some fins that extend from the slider
25 through the slot. Okay? And all of this is, this entire

~~OPENING STATEMENT OF MR. JOHNSON~~

1 combination is what this invention is about. There's more than
2 just two parts. There's an entire invention defined here.

3 But I will agree that the dispute boils down to a
4 two-part guide section. And I pulled that out on the screen.
5 This is what the dispute is about. This 005 (indicating), does
6 this include a two-part guide section?

7 Now, Okin says that, yeah, the two parts in the 005
8 are parts of the guide section. When this slider moves back
9 and forth, they are parts of the guide section. They
10 participate in the guiding.

11 Kaidi, Kaidi says that the lower part is a spindle
12 cover. It's a decoration. It's for collecting grease. It's
13 not part of the guide section.

14 We disagree. We believe that common sense and the
15 evidence will show that this is a two-part guide section.

16 Now, there are three other claims that are also
17 involved in this suit, and these are Claims 26, 27, and 28.

18 And these add additional elements to Claim 1. All
19 right? And I don't think there's any dispute, and that's what
20 I heard earlier during the opening. Said it's not important.
21 There's no dispute that this is metal. There's no dispute that
22 this is metal (indicating). Claim 26 requires that the two
23 parts are metal.

24 There's no dispute that this part is aluminum
25 (indicating).

~~OPENING STATEMENT OF MR. JOHNSON~~

1 There's no dispute that this part is aluminum
2 (indicating).

3 And, again, this is the 005 I'm holding (indicating).

4 And there's no dispute that these two parts, A and B,
5 are cut of extruded material cut to length.

6 Now, I think it's important to talk a little bit more
7 about what "guiding" means. All right? And if you take a look
8 at Figure 1 -- which, again, it's an example. This is Figure 1
9 in the patent, and this is an example. Right? It's not the
10 claims. It's an example.

11 So you don't compare the figure to determine -- you
12 have to look at the claim language. It's all about the claim
13 language. It's not about finding some sort of connection
14 between this drawing. But this is an embodiment, and so it's
15 good to explain one embodiment.

16 So let me show you what we're looking at in this
17 particular figure.

18 So this is Figure 1 of the patent, and it's a side
19 view. So if you picture yourself looking into the side of
20 this, there's some cutaway on the motor side. But you can see
21 there's a spindle shown in orange.

22 There's a slider. And, again, that slider is going to
23 move back and forth. There's an upper guide section
24 (indicating), and there's a lower guide section (indicating).
25 And there's a slit (indicating), and the slit exists on both

~~OPENING STATEMENT OF MR. JOHNSON~~

1 sides.

2 And we just colored that so you can see these elements
3 a little clearer. And, you know, this is a collection of these
4 elements together as shown on Figure 1.

5 Okay. Now I want to bring this alive a bit and show
6 you in an animation. You can see this three-dimensional
7 rendition come up on your screen. We'll see it start to move
8 in just a moment.

9 And this gives you kind of the imagery of what it
10 looks like if you're looking into now, into the spindle, right
11 into that spindle. You can see the spindle (indicating). You
12 can see the guide section up top (indicating). You can see the
13 guide section on the bottom (indicating). And you can see that
14 slider (indicating). And let's watch it move.

15 (Animation played.)

16 **MR. JOHNSON:** And there it slides back and forth,
17 okay, along the two-part guide section.

18 Now, again, we got to go back to the claim. We don't
19 look at the figures. We look at the figure for education, but
20 we look at the claim for determining the mete and bound of the
21 invention.

22 And, again, this claim, the dispute is all about
23 whether there's a two-part guide section in this device.

24 Let's take a closer look at this Kaidi 005.

25 Part of the guide section, the top part, part of the

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1 guide section, Kaidi says, No. We believe the common sense is
2 evident, and the evidence will prove that it is part of the
3 guide section.

4 The slider slides along the two-part guide section.
5 There's a slit. I don't think there's a dispute about the slit
6 on both sides.

7 And if we twist this and we cut it, what you'll see is
8 you'll see a top part (indicating); you'll see a bottom part
9 (indicating); and you'll see the cut part of the slider
10 (indicating). And when this slider moves back and forth, it
11 moves along the two-part guide section.

12 Here we've extracted the two-part guide section; as
13 the evidence will show, both of these sections participating in
14 the guiding of the slider as it moves back and forth.

15 Counsel for Kaidi introduced his witnesses, and I'll
16 do the same. We've already did a little bit of that. But you
17 will hear from Mr. Kleinle, who, again, is the head of
18 DewertOkin.

19 You'll hear from Philip Brown, president and CEO of
20 Okin America.

21 Greg Bowen, from the Mississippi plant, you'll hear
22 from him.

23 And you'll also hear from two of our experts, James
24 Babcock and Richard Troxel, technical expert and damages
25 expert. And, you know, they can explain the technology and the

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1 damages issue to you. I'm going to leave most of that to them.

2 I want to talk a little bit about the history of --
3 the 005 history, that is.

4 So Kaidi starts to develop its first linear actuator
5 product in 2006. We heard about that. It obtains an Okin
6 BetaDrive.

7 There's no dispute that it got this BetaDrive. No
8 dispute that it took it apart. There's no dispute that it
9 analyzed it. And there's no dispute that it then started
10 development of the 001 in 2006, September/October time frame.
11 There's no dispute that that particular 001 product didn't make
12 it to the marketplace.

13 Next was the 002.

14 Next was the 003.

15 And there's no dispute that a customer informed Okin
16 about -- informed Kaidi about Okin's patent in 2008.

17 And we heard about the shift to the 004 product. We
18 heard about the shift to this single-guide section product.
19 And as Mr. Rosenthal said, we're not going to dispute that.
20 Okin does not dispute that they moved to a single-part guide
21 section product.

22 And we heard about the start of the development of the
23 005 and also about the sales of the 005 in the U.S, the first
24 sales of the 005 in the U.S. in 2012.

25 So really, we're on the same page with respect to many

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1 of these events. But one thing I want to highlight is what
2 happened after this litigation started.

3 Okin asserted infringement against Kaidi's 005
4 April 2013 as having a two-part guide section.

5 Kaidi denies that it's a two-part guide section.

6 Now, in December of 2013, Kaidi makes its first sale
7 of the 007 product, and this is important.

8 This is a metal product, the 005. And with respect to
9 the precise issue that is in dispute in this case, whether this
10 is part of the guide section, Kaidi switches its part to
11 plastic (indicating), goes to plastic.

12 Let's continue on some additional events.

13 In August of 2014, Mr. Yao, sitting in the back,
14 submits a declaration in this case saying that Guide Rail A on
15 technical documents is really or should be named a spindle
16 cover. Okay. We're not going to go to the next slide.

17 Yes, here we'll go.

18 So in this technical document -- and you saw it in the
19 opening of Mr. Rosenthal.

20 This technical document identifies two guide rails:
21 Guide Rail A and Guide Rail B. And this is with respect to the
22 KDP'005 product, and this is an internal technical document.

23 After this was raised, the declaration was submitted
24 by Mr. Yao, one of the lead engineers at Kaidi, saying that
25 that was a mistake.

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1 And this is the precise issue that is being litigated
2 in this case, whether this product is a two-part guide or a
3 one-part guide, the precise issue Mr. Yao comes back and says
4 that this is a cover rather than a guide.

5 In December of 2014, the 005 engineer who designed
6 this product, Mr. Zhu, he admits that a Guide Rail A, this
7 Guide Rail A, can prevent the movement in a downward direction
8 of the slider.

9 And during his deposition, he drew out an exhibit.
10 And you can see that exhibit. And he said specifically that
11 the lower guide rail, this Guide Rail A, can prevent the
12 Y minus direction movement of the slider as it's moving along.
13 If it's preventing the movement downward, we would submit that
14 that is evidence of guiding.

15 Okin's technical expert, Mr. Babcock, you'll see him
16 during the trial. He analyzes the 005, and he analyzes it with
17 both parts present. He doesn't take the part off and analyze
18 it that way.

19 He analyzes it as installed in the chair and used in
20 normal operation, and that's important. These aren't designed
21 to be walked around a courtroom and shown to a jury. They're
22 not made for that purpose. They're made to actually sit in
23 chairs and to be subjected to various forces.

24 His analysis relies on many items, including the
25 patent documents, physical examination, technical drawings from

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1 Kaidi, witness testimony, and testing, such as contact testing.
2 And you heard a little bit about that from Mr. Rosenthal,
3 strain/force testing.

4 For example, with respect to this contact testing,
5 yes, he did place a marker application on the side of the guide
6 rails, and he ran the slider back and forth. And the slider
7 rubbed off the marker, and that is evidence of guiding.

8 Now, Mr. Rosenthal used an example of a train coming
9 into the station. I don't know of many trains that actually
10 scrape up against the side of the platform when they're coming
11 into the train -- into the station.

12 But with respect to this product, as it's going back
13 and forth, it makes the contact, as the evidence will show, and
14 it participates -- the lower guide rail and the upper guide
15 rail both participate in the guiding of the slider.

16 Another testing example is strain/gauge testing that
17 Mr. Babcock did that measures certain forces applied to the
18 lower guide rail and the upper guide rail. And he will explain
19 all of that, very simple.

20 And you can make the judgment call with respect to his
21 testing, and you can apply your own common sense and perception
22 to that.

23 Just very quickly on the validity of this patent.

24 Kaidi relies on one piece of prior art, the Takei
25 reference. And that reference was already considered by the

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1 Patent Office when it was granted.

2 In fact, if you look at the front cover of the patent,
3 Takei is listed right there. The examiner considered this
4 piece of prior art and granted this patent in 1999. This
5 patent has been alive for almost 20 years now.

6 Kaidi's not challenging, by the way, Claims 26, 27,
7 and 28. Only challenging Claim 1.

8 Damages. The evidence will show that the Okin
9 BetaDrive has been a successful product over the years. You
10 can see from this slide here from 2009, the sales were moving
11 in a trajectory upward. And you can see what happened in 2013.
12 Okay?

13 Now, this patent has withstood time, and you can see
14 this value throughout that time.

15 And what Kaidi is seeking here -- or what, rather,
16 Okin is seeking here is what is known as a reasonable royalty.
17 And this is the rent for the use of this patent. And that rent
18 is based on the overall sales of the systems of the 005 from
19 April 3rd, 2013, when we started our lawsuit against Kaidi.
20 And through the time of April 30th, 2015, the overall sales
21 would be about \$8.2 million.

22 And the reasonable royalty that we seek is in the
23 range of about \$1.2 million. And the evidence will show that
24 we are entitled to this rent for the use of this patent. After
25 it's expired, we will agree it's free to be used by the public

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1 'cause that's the bargain we got. The bargain we got is that
2 we got the exclusive right to the end of it, but not until the
3 end of it.

4 In summary, Okin owns this patent. There's no doubt
5 about that or no dispute about that. And Kaidi infringes with
6 its 005. The evidence will show that.

7 The evidence will show that this system includes a
8 two-part guide system and that the slider slides along and the
9 two parts help guide the slider along as it moves on its path.

10 And the evidence will show that Kaidi owes Okin
11 royalty payment for the infringement.

12 Thank you, Your Honor.

13 **THE COURT:** Thank you. Appreciate it.

14 All right. So, ladies and gentlemen, it's fairly
15 close to 5 o'clock. It's been a busy day already. I think
16 rather than trying to get started with a witness, we ought to
17 let you go home.

18 As I told you, we're not sitting tomorrow. You don't
19 need to come in tomorrow. But you'll be coming in Wednesday.
20 And I'll ask you to be here on time. I'm hoping to get started
21 at 9:30 on Wednesday morning.

22 I should tell you that if we start at 9:30 or 10:00,
23 it doesn't mean that people are not doing work before that
24 time. There are other things that we might try to get done at
25 the beginning and end of the day, but I think we can go ahead

1 and start at 9:30 on Wednesday.

2 Just leave your notes and binders and all that sort of
3 thing here. Don't talk about the case. Keep an open mind.
4 Don't go do any research about the case.

5 I appreciate very much your time so far.

6 And Ms. Moyé can let you know if there's anything --
7 talk to you if you have any questions, but you are excused
8 until 9:30 Wednesday morning.

9 Thank you very much.

10 (Jury excused at 4:47 p.m.)

11 **THE COURT:** All right. Thank you.

12 You can all have a seat again.

13 Why don't we look forward to Wednesday for just a
14 moment and tell me the witnesses you're expecting to call.

15 That would be Okin.

16 **MR. GORMAN:** Okin will start off with Mr. Bowen. I've
17 already informed Mr. Hnath about this, Your Honor. And then we
18 will follow with Mr. Brown.

19 **THE COURT:** Brent?

20 **MR. GORMAN:** Brown.

21 **THE COURT:** Oh, Mr. Brown. Yes. Okay. All right.

22 Any particular issues we want to anticipate for
23 Mr. Bowen or Mr. Brown?

24 **MR. GORMAN:** I think that may take the whole day. I
25 hope not. I think we may play a video. We will certainly

1 advise opposing counsel who, but we may play a video, one or
2 two.

3 And then after that, I think we'll be in Mr. Babcock.
4 So hopefully we may get to him on Wednesday. We're trying to.

5 **THE COURT:** Okay.

6 **MR. GORMAN:** We're trying to.

7 **THE COURT:** Okay. Appreciate that.

8 Any particular issues, objections, and so forth?
9 Anything we can anticipate regarding Mr. Bowen or Mr. Brown?

10 **MR. GORMAN:** I think we do have the Southern Motion
11 issue with Mr. Brown, so that's a ways away. Actually, we have
12 tomorrow to talk about it.

13 I don't know. We might be able to reach some
14 agreement on it, but I think that's an issue that will
15 affect -- Your Honor, I can't think of any issue that affects
16 Mr. Bowen.

17 Can you, John?

18 **MR. JOHNSON:** No.

19 **THE COURT:** Okay. Thank you.

20 **MR. HNATH:** I agree, Your Honor.

21 **THE COURT:** Mr. Hnath.

22 **MR. HNATH:** Why don't we talk to counsel. Maybe we
23 can get together before 9:30, so 9 o'clock Wednesday, if that
24 makes sense.

25 **THE COURT:** Sure. You mean you'd like to get together

1 in court or --

2 **MR. HNATH:** If there are any issues to raise.

3 **THE COURT:** Sure. I was going to say we can do that,
4 or you all can come to chambers a little bit after 9:00 on --

5 **MR. HNATH:** That would be fine.

6 **THE COURT:** Let's say 10 after 9:00 on Wednesday, if
7 you've got issues.

8 **MR. GORMAN:** Right. We're going to talk tomorrow.

9 **THE COURT:** Right.

10 **MR. GORMAN:** Maybe we won't have issues.

11 **THE COURT:** Maybe you won't have issues. That would
12 be delightful.

13 **MR. GORMAN:** You never know.

14 **MR. HNATH:** So just to clarify, tomorrow it's -- or
15 Wednesday, it's Babcock, Brown --

16 **MR. GORMAN:** No. I think I said --

17 **MR. HNATH:** Bowen, Brown, Babcock, the three Bs.

18 **MR. GORMAN:** Well, no. I also said we may play a
19 video.

20 **THE COURT:** And a video, but you're going to tell
21 them --

22 **MR. GORMAN:** Absolutely.

23 **THE COURT:** -- what that video might be.

24 **MR. GORMAN:** I think we'll regroup tonight and
25 tomorrow decide.

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Douglas J. Zweizig, RDR, CRR - Federal Official Court Reporter

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/18 Page 99 of 115		
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A	Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 100 of 115	31/23 33/24 attorney [1] 78/15 attorneys [3] 22/2 22/9 32/16 attorneys' [1] 22/6 audience [2] 44/4 45/17 August [1] 90/13 Autuoro [2] 1/17 76/17 award [3] 13/21 13/24 13/25 awarded [2] 8/16 13/19 away [5] 17/3 52/2 55/5 56/10 96/11
<p>agree [10] 24/25 48/21 58/4 61/25 63/16 75/4 83/11 85/3 93/25 96/20</p> <p>agreed [5] 6/8 25/3 28/12 28/13 55/22</p> <p>agreement [2] 28/18 96/14</p> <p>agrees [2] 47/18 56/1</p> <p>ah [1] 37/8</p> <p>ahead [3] 5/7 74/17 94/25</p> <p>air [3] 38/18 38/23 71/16</p> <p>AL [2] 1/3 1/5</p> <p>alert [1] 27/20</p> <p>alive [2] 87/5 93/5</p> <p>all [106]</p> <p>allegation [1] 64/23</p> <p>allegedly [1] 7/21</p> <p>Allen [2] 1/20 32/19</p> <p>allergy [1] 34/21</p> <p>allowed [7] 25/6 26/2 27/16 45/12 45/13 45/19 72/16</p> <p>allows [2] 36/19 82/20</p> <p>almost [4] 29/6 42/11 53/22 93/5</p> <p>along [22] 2/19 6/18 6/25 11/19 14/5 32/21 57/22 60/15 62/1 62/2 62/8 63/24 66/8 66/11 69/21 70/7 87/17 88/4 88/11 91/12 94/8 94/9</p> <p>already [16] 7/9 7/12 14/6 17/18 19/4 42/7 43/7 45/23 46/5 59/13 63/17 77/15 88/16 92/25 94/15 95/17</p> <p>also [40] 1/18 3/21 7/18 8/6 9/5 9/21 10/23 11/5 11/15 14/6 18/15 18/23 21/5 24/16 32/18 33/5 33/15 43/8 43/21 44/3 48/8 49/5 49/6 49/22 59/21 64/1 65/8 66/3 66/13 69/9 74/23 75/9 75/19 76/1 76/12 84/24 85/16 88/23 89/23 97/18</p> <p>although [2] 2/10 18/23</p> <p>aluminum [3] 49/10 85/24 86/1</p> <p>always [6] 19/19 27/13 42/24 51/5 58/24 72/18</p> <p>AMERICA [9] 1/5 1/19 44/22 75/17 76/6 76/9 80/9 80/12 88/20</p> <p>American [1] 44/21</p> <p>among [2] 40/21 52/9</p> <p>amount [4] 3/23 14/1 21/6 21/16</p> <p>analogize [1] 28/22</p> <p>analogy [4] 25/22 28/15 29/1 70/9</p> <p>analysis [2] 27/11 91/24</p> <p>analyze [1] 91/17</p> <p>analyzed [1] 89/9</p> <p>analyzes [3] 91/16 91/16 91/19</p> <p>animation [5] 57/14 59/5 60/25 87/6 87/15</p> <p>animations [1] 76/20</p> <p>annoying [1] 19/7</p> <p>another [11] 12/23 13/6 15/21 16/16 18/2 51/7 67/11 71/7 76/9 76/15 92/16</p> <p>answer [7] 31/25 37/11 70/16 70/22 71/2 71/5 73/9</p> <p>answered [1] 31/21</p> <p>anticipate [2] 95/22 96/9</p> <p>anticipated [2] 13/15 13/16</p> <p>any [47] 3/1 3/1 8/14 12/5 13/17 13/24 14/1 14/11 14/19 14/21 15/1 15/7 15/8 15/9 17/6 17/6 17/8 17/8 17/11 17/22 17/23 20/11 21/2 21/19 21/24 23/13 25/1 29/24 37/20 43/11 46/23 53/7 63/14 64/10 64/22 64/23 65/13 66/18 66/19 78/16 85/19 95/4 95/7 95/22 96/8 96/15 97/2</p>	<p>anybody [3] 5/3 17/14 23/4</p> <p>anybody's [2] 58/22 71/25</p> <p>anymore [2] 36/13 56/11</p> <p>anyone [7] 4/25 16/23 16/24 17/1 17/1 41/14 41/15</p> <p>anything [21] 2/13 2/18 5/10 14/11 15/4 23/21 28/9 30/19 35/9 39/7 58/22 60/6 61/16 61/23 62/2 63/17 66/2 68/9 95/6 96/9 98/3</p> <p>apart [1] 89/8</p> <p>apologize [1] 19/7</p> <p>application [8] 46/9 46/14 46/14 51/18 78/25 79/2 82/16 92/5</p> <p>applications [1] 80/12</p> <p>applied [5] 9/7 20/13 51/18 82/16 92/17</p> <p>applies [3] 11/12 14/8 22/10</p> <p>apply [12] 11/21 12/1 12/12 14/9 15/20 19/22 27/10 35/7 35/8 74/3 75/6 92/21</p> <p>appreciate [5] 32/12 33/24 94/13 95/5 96/7</p> <p>approach [1] 66/21</p> <p>approaching [1] 41/20</p> <p>approximately [1] 22/24</p> <p>April [4] 38/9 90/4 93/19 93/20</p> <p>April 2013 [1] 90/4</p> <p>April 30th [1] 93/20</p> <p>April 3rd [1] 93/19</p> <p>apt [1] 70/9</p> <p>aptly [1] 35/5</p> <p>are [114]</p> <p>aren't [2] 72/4 91/20</p> <p>argue [5] 8/6 15/9 28/20 34/19 35/10</p> <p>argues [1] 7/23</p> <p>arguing [2] 35/9 61/4</p> <p>argument [6] 25/18 25/20 28/16 60/11 64/25 68/19</p> <p>arguments [5] 14/24 22/9 22/12 28/25 31/12</p> <p>around [14] 4/25 5/6 19/12 22/23 25/8 36/5 48/7 50/4 51/19 51/23 57/9 57/24 63/18 91/21</p> <p>arrangements [1] 30/21</p> <p>art [22] 8/10 11/22 11/24 12/2 13/13 24/15 24/22 25/21 26/5 26/8 26/11 26/22 27/6 27/7 27/17 41/10 68/12 68/15 68/23 69/14 92/24 93/4</p> <p>article [1] 17/12</p> <p>as [104]</p> <p>Ashley [2] 41/20 59/15</p> <p>ask [8] 5/24 16/22 23/12 23/18 70/12 73/3 74/3 94/20</p> <p>asked [12] 11/6 12/13 12/13 12/17 13/6 22/13 37/24 49/14 60/22 65/11 70/10 70/22</p> <p>asking [5] 28/25 31/17 31/19 35/7 72/15</p> <p>asks [1] 28/24</p> <p>aspect [1] 83/12</p> <p>assembly [3] 53/18 62/18 62/22</p> <p>asserted [4] 8/1 11/1 12/19 90/3</p> <p>asserts [2] 3/23 21/7</p> <p>assessed [1] 12/21</p> <p>assistance [1] 76/23</p> <p>associated [4] 77/18 77/19 84/3 84/5</p> <p>assume [1] 4/24</p> <p>assuming [1] 28/11</p> <p>assurance [2] 41/13 41/15</p> <p>attached [4] 36/11 47/20 48/3 67/18</p> <p>attended [1] 45/2</p> <p>attention [7] 18/16 19/2 23/3 23/3 31/23</p>	<p>B</p> <p>Babcock [8] 69/19 71/3 88/24 91/15 92/17 96/3 97/15 97/17</p> <p>Babcock's [3] 67/1 67/25 70/23</p> <p>Bachelor's [1] 65/18</p> <p>back [31] 2/9 24/7 31/15 36/2 36/20 37/1 38/8 51/18 54/12 59/17 66/17 66/20 69/23 73/2 75/24 76/15 77/23 81/14 81/14 84/20 84/23 85/8 86/23 87/16 87/18 88/10 88/14 90/13 91/3 92/6 92/12</p> <p>background [3] 6/2 7/8 34/2</p> <p>bad [1] 66/21</p> <p>Baltimore [5] 1/8 1/25 41/2 41/7 44/12</p> <p>bankrupt [1] 51/6</p> <p>barbed [1] 46/20</p> <p>barbed-wire [1] 46/20</p> <p>bargain [4] 79/14 79/15 94/1 94/1</p> <p>based [9] 17/16 34/8 34/8 34/8 37/24 42/19 51/17 79/14 93/18</p> <p>basic [8] 8/19 47/6 47/8 47/10 48/6 48/18 52/15 83/23</p> <p>basically [1] 67/25</p> <p>basis [2] 12/22 16/15</p> <p>be [191]</p> <p>bears [1] 39/1</p> <p>beat [1] 45/1</p> <p>because [23] 2/14 13/10 19/19 26/7 37/21 38/15 38/22 41/6 48/4 49/18 53/7 57/13 61/1 62/11 64/2 67/2 67/4 67/7 69/6 71/16 73/14 81/10 82/5</p> <p>become [3] 5/4 8/25 56/16</p> <p>Becomes [1] 59/19</p> <p>beds [2] 40/7 80/11</p> <p>been [40] 3/9 7/12 7/12 7/19 8/12 8/15 8/18 12/13 13/18 13/22 14/21 15/10 15/19 16/13 19/25 20/8 20/9 20/10 20/25 26/9 27/8 44/2 48/7 49/1 50/4 51/5 51/16 51/19 54/11 55/1 56/15 56/20 62/15 63/18 72/2 72/3 80/16 93/5 93/9 94/15</p> <p>before [28] 1/10 2/9 2/12 4/20 5/20 22/11 23/22 35/19 39/10 39/12 39/24 45/14 48/20 51/5 52/13 63/11 63/14 63/22 64/19 64/22 64/23 64/24 65/2 68/23 69/3 83/5 94/23 96/23</p> <p>begin [3] 8/25 19/14 22/19</p> <p>beginning [3] 42/25 60/18 94/25</p> <p>begins [2] 9/9 10/7</p> <p>behalf [4] 30/4 30/6 33/11 33/18</p> <p>being [13] 9/25 12/17 20/4 20/21 24/22 28/23 31/20 50/10 63/18 66/19 67/17 70/10 91/1</p> <p>believe [14] 4/6 4/12 22/3 22/4 22/20 24/5 24/24 30/10 31/1 31/16 32/3 74/5 85/14 88/1</p> <p>bench [3] 19/5 19/5 19/9</p> <p>benefit [2] 82/24 82/25</p> <p>best [5] 5/4 30/14 41/16 43/18 75/3</p> <p>BetaDrive [11] 25/2 51/14 51/25 52/18</p>

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 101 of 115		
B		
BetaDrive... [7] 75/21 80/19 80/21 83/13 89/6 89/7 93/9 better [5] 43/17 52/22 72/13 72/14 72/14 between [11] 20/21 24/2 26/22 28/4 34/7 34/7 48/8 57/5 64/12 70/24 86/14 beyond [2] 20/14 20/19 big [3] 51/9 71/19 72/8 bigger [1] 41/4 binder [1] 7/4 binders [2] 83/2 95/2 bit [16] 2/8 6/1 7/9 13/14 19/12 19/18 23/10 35/23 41/4 81/10 86/6 87/5 88/16 89/2 92/2 97/4 black [1] 47/21 BLAKE [3] 1/10 35/5 36/18 block [1] 84/19 blogs [1] 17/10 boards [1] 40/19 boils [1] 85/3 bolt [1] 47/23 book [1] 57/8 books [1] 55/7 both [16] 12/9 16/19 30/1 31/5 31/12 37/14 39/25 55/20 62/20 84/15 84/16 86/25 88/6 88/13 91/17 92/15 bottom [4] 58/13 67/13 87/13 88/8 bound [1] 87/20 boundaries [1] 83/16 Bowen [8] 1/19 75/14 88/21 95/16 95/23 96/9 96/16 97/17 box [2] 19/13 23/14 break [5] 23/1 23/4 23/22 41/17 83/19 breaks [1] 22/24 breakthrough [2] 80/20 83/4 Brent [1] 95/19 Brian [3] 1/13 32/16 33/15 brief [4] 4/7 7/11 9/11 32/14 briefings [1] 30/4 briefly [6] 4/20 9/1 10/16 25/16 72/17 82/12 bring [4] 5/7 41/22 67/12 87/5 bringing [1] 19/4 brought [2] 46/10 49/24 Brown [11] 32/6 76/5 88/19 95/18 95/20 95/21 95/23 96/9 96/11 97/15 97/17 Bryan [1] 32/17 Bs [1] 97/17 buildings [1] 42/25 built [3] 42/14 42/14 45/3 bunch [3] 28/19 28/19 53/5 burden [4] 2/24 39/2 39/4 66/14 business [3] 41/5 42/18 81/9 busy [1] 94/15 Butang [1] 33/5 button [1] 35/20 buy [1] 40/10	calling [1] 21/20 calls [1] 45/2 came [8] 2/9 16/6 57/12 63/14 66/15 74/1 77/24 80/21 can [106] can't [16] 15/13 15/14 18/19 27/15 34/18 34/18 34/18 34/23 41/16 41/17 63/16 71/3 71/3 71/3 72/8 96/15 Canada [1] 43/17 cannot [1] 71/2 cares [1] 45/16 carpet [4] 58/17 58/18 59/16 59/17 carried [1] 42/15 case [123] cases [10] 12/12 27/12 34/15 34/16 34/21 34/25 73/4 73/5 73/5 73/6 catch [4] 2/18 59/24 61/18 68/8 catch all [1] 2/18 catches [1] 64/9 CATHERINE [1] 1/10 caught [5] 4/3 59/16 59/18 59/19 60/4 causes [3] 36/10 36/25 36/25 CCB [1] 1/4 CCB-13-1798 [1] 1/4 Cease [3] 56/4 56/5 56/7 cell [1] 17/19 Center [1] 6/6 CEO [2] 76/9 88/19 certain [6] 11/5 14/23 15/18 16/3 29/14 92/17 certainly [4] 4/25 43/18 52/3 95/25 certainty [1] 20/20 Certified [1] 98/14 certify [1] 98/9 chain [1] 16/2 chair [33] 35/18 35/21 35/22 36/1 36/8 36/10 36/11 36/17 36/20 58/14 59/19 66/23 67/5 67/11 67/12 67/12 67/13 67/14 67/14 67/17 67/20 68/3 74/15 77/18 77/22 77/23 77/23 79/24 81/21 81/22 82/4 84/23 91/19 chairman [18] 32/25 42/4 42/5 42/6 42/6 42/22 43/7 43/9 43/11 43/18 45/11 45/18 55/8 55/9 55/16 56/5 73/2 73/7 Chairman Zhou [2] 42/5 45/18 chairs [4] 35/19 41/21 80/11 91/23 challenge [1] 44/25 challenging [2] 93/6 93/7 chambers [1] 97/4 chance [3] 21/23 22/9 30/13 change [3] 2/24 3/16 63/19 CHANGZHOU [6] 1/3 1/19 32/7 32/25 40/23 81/2 character [1] 55/15 charge [1] 80/2 chemicals [1] 34/22 Children's [1] 59/18 China [7] 40/25 41/1 41/23 41/24 44/13 50/24 81/5 Chinese [3] 40/3 44/24 55/22 chose [1] 39/13 chronological [1] 19/20 circuit [3] 26/10 26/17 40/19 circumstances [1] 16/2 circumstantial [4] 15/22 16/2 16/14 16/18 cite [1] 26/10 city [3] 33/22 40/23 41/8 CIVIL [1] 1/4 claim [71] 2/18 4/1 5/8 5/10 8/6 8/13 8/14	10/4 10/6 10/10 10/11 10/12 10/16 10/24 11/11 11/9 11/12 11/15 11/20 11/22 11/24 12/22 12/22 12/23 13/4 13/7 13/7 13/10 13/12 13/15 13/17 20/7 21/2 21/4 21/9 21/11 21/18 21/24 26/1 26/7 46/19 46/19 46/21 46/22 47/2 47/2 47/7 49/6 49/17 49/19 49/21 69/17 69/17 70/4 78/14 78/14 78/14 78/15 78/18 83/11 83/12 83/15 83/17 85/18 85/22 86/12 86/12 87/18 87/20 87/22 93/7 Claim 1 [4] 49/6 49/17 49/19 49/21 Claim 28 [1] 78/15 claim-by-claim [1] 12/22 claimed [6] 63/4 78/9 78/9 78/11 78/11 78/12 claims [39] 7/24 8/1 8/1 8/5 8/12 8/21 10/3 10/3 10/14 10/15 10/16 10/22 10/23 11/6 11/7 12/4 12/19 12/19 13/9 20/25 25/21 26/13 26/14 27/5 27/9 27/11 28/2 49/5 49/18 49/19 49/22 61/6 61/6 69/11 78/13 85/16 85/17 86/10 93/6 Claims 1 [1] 20/25 clarify [1] 97/14 class [1] 65/9 clear [13] 13/11 17/18 20/9 20/10 20/21 21/11 38/18 38/19 38/23 38/23 50/23 71/16 72/18 clearer [1] 87/3 clearly [1] 84/13 client [6] 32/22 33/19 36/17 38/7 39/25 40/2 clients [1] 32/11 climate [1] 41/3 close [6] 10/20 55/17 70/15 70/17 71/6 94/15 closer [3] 27/20 77/3 87/24 closing [2] 22/9 22/12 co [1] 76/14 co-counsel [1] 76/14 coast [2] 41/1 41/3 collecting [1] 85/12 collection [1] 87/3 colored [1] 87/2 column [8] 9/23 9/23 9/25 10/2 10/4 10/5 10/15 10/17 Column 1 [1] 9/23 columns [2] 9/19 9/19 combination [1] 85/1 come [15] 3/10 11/20 14/17 18/1 18/21 19/19 19/19 41/24 44/12 65/12 75/23 77/24 87/7 94/19 97/4 comes [6] 15/24 16/9 39/5 57/22 70/12 91/3 comfort [1] 71/24 coming [6] 46/20 76/22 77/3 92/8 92/10 94/19 comments [2] 22/5 22/6 Commission [1] 38/12 common [14] 15/17 15/20 34/8 35/6 35/7 71/4 74/1 74/2 75/5 75/7 82/10 85/14 88/1 92/21 community [1] 34/9 compact [3] 83/3 83/6 83/9 companies [6] 34/7 45/7 72/7 74/25 80/10 80/11 company [24] 1/3 32/8 40/3 42/6 42/8 42/9 42/12 42/12 42/23 43/5 43/15 43/22 44/13 44/24 50/21 51/2 51/7 52/8 55/8 55/15 55/16 69/2 71/22 75/25
C		
Cal [1] 51/18 call [11] 15/16 21/20 42/4 42/5 48/4 52/13 62/23 65/4 78/21 92/20 95/14 called [38] 7/13 7/13 9/9 10/3 10/12 13/13 14/18 19/6 19/15 20/9 26/4 29/14 36/18 36/22 38/11 43/10 48/3 49/18 51/7 51/14 52/12 57/12 57/13 57/20 58/10 59/1 63/2 63/10 63/13 63/21 63/25 64/18 64/23 65/3 77/20 78/21 84/18 84/18		

Case 1:13-cv-01798-CCB Document 258-1 Filed 05/29/15 Page 102 of 115			
C	<p>compare [3] 25/21 57/10 86/11 comparing [2] 83/13 83/14 comparison [9] 24/23 25/19 26/15 26/21 26/22 26/25 27/25 27/25 28/4 compensate [5] 8/16 13/19 13/24 14/2 21/7 compete [3] 72/3 72/8 72/9 completely [6] 11/13 11/13 11/14 11/14 18/19 59/11 complicated [2] 35/1 40/19 component [4] 11/17 11/18 48/15 63/13 components [2] 29/14 62/19 compromise [1] 30/25 concerned [2] 38/16 38/16 concessions [1] 28/19 conclude [1] 16/13 conclusions [1] 15/18 conduct [1] 16/21 conference [2] 19/5 19/13 conferences [1] 19/5 configuration [2] 67/11 67/15 configured [1] 67/16 confirm [1] 30/20 confirming [1] 68/6 confused [1] 67/20 Congress [1] 77/25 connection [2] 30/3 86/13 consider [11] 11/1 11/3 12/13 12/13 14/25 15/7 15/11 15/13 15/15 16/19 68/21 considered [4] 9/6 18/14 92/25 93/3 considering [1] 13/5 consistent [1] 63/7 consists [1] 14/16 Constitution [1] 77/25 construction [2] 5/8 5/10 contact [5] 70/24 70/24 92/1 92/4 92/13 contention [1] 20/24 continue [5] 10/5 10/14 21/1 60/25 90/12 continues [2] 3/9 10/9 control [6] 18/12 18/21 40/13 40/14 40/14 40/18 controlled [1] 81/24 conviction [1] 20/10 convincing [4] 13/11 20/9 20/21 21/11 Cooperation [2] 82/19 82/20 copy [2] 6/17 25/4 copying [1] 25/4 corporate [6] 1/19 1/19 33/3 43/10 75/13 75/13 correct [3] 64/19 75/8 98/10 couches [1] 40/7 could [7] 32/24 59/8 62/5 62/6 62/6 68/22 69/14 couldn't [1] 16/8 counsel [12] 15/9 23/20 27/1 27/23 28/14 31/24 36/4 43/10 76/14 88/15 96/1 96/22 Counter [6] 1/4 1/5 1/12 1/15 1/20 1/20 counterpart [1] 50/19 countries [4] 33/25 34/1 34/4 34/7 country [1] 34/5 couple [1] 43/19 course [7] 14/12 19/6 21/14 27/12 28/5 29/19 43/6 court [12] 1/1 1/24 18/24 23/18 29/24 38/10 38/11 73/4 74/22 97/1 98/7 98/15 courthouse [2] 16/6 33/22</p>	<p>courtroom [11] 1/8 5/12 15/5 16/11 17/2 17/3 17/17 24/9 31/14 72/11 91/21 courts [1] 34/2 cover [42] 9/2 9/10 24/21 27/4 54/11 59/23 59/23 60/1 60/5 60/5 60/9 60/9 60/16 60/23 61/1 61/15 62/22 63/13 64/7 64/16 64/24 65/3 65/4 65/13 65/24 66/11 66/12 66/16 66/17 67/6 67/6 67/22 68/6 68/22 69/9 69/12 69/13 70/24 85/12 90/16 91/4 93/2 covered [1] 7/23 create [1] 83/3 created [1] 83/8 credentials [1] 72/22 credible [1] 74/7 criminal [2] 20/12 20/14 critical [3] 48/10 48/10 83/12 CRR [3] 1/23 98/9 98/13 crux [1] 49/23 cushions [2] 35/24 82/5 customer [2] 41/20 89/15 customers [10] 38/17 44/1 53/6 53/19 58/19 58/21 59/15 71/19 71/21 72/8 cut [4] 86/5 86/5 88/7 88/9 cutaway [1] 86/20</p> <p>D</p> <p>damages [20] 3/20 3/23 7/20 8/16 13/19 13/21 13/24 14/4 21/6 21/16 21/19 72/17 72/19 72/20 72/21 72/24 72/25 88/24 89/1 93/8 dangerous [1] 59/20 date [8] 9/3 9/5 54/23 54/25 78/25 79/2 79/3 98/16 date's [1] 54/23 dated [1] 64/21 day [14] 22/19 22/21 23/6 37/20 37/21 43/15 43/15 54/11 54/11 65/5 72/15 94/15 94/25 95/24 day-to-day [1] 54/11 days [2] 22/16 73/20 deal [5] 28/20 34/3 34/16 35/3 71/21 debated [1] 61/7 dec [1] 24/16 decades [1] 80/16 deceive [1] 66/8 deceiving [1] 66/9 December [2] 90/6 91/5 decide [18] 8/11 8/14 8/16 12/6 12/17 13/6 13/17 13/19 14/8 14/14 15/6 16/15 19/24 22/13 34/4 35/11 71/5 97/25 decided [8] 34/8 52/7 52/21 56/13 59/22 62/14 69/5 73/9 decides [1] 68/15 deciding [1] 19/23 decision [6] 10/25 14/16 15/11 17/15 37/21 37/24 decisions [4] 34/6 42/18 42/18 42/21 declaration [10] 29/7 29/10 29/11 29/14 29/17 29/22 30/3 30/14 90/14 90/23 decoration [3] 61/17 64/9 85/12 deed [1] 80/1 Defendant [6] 1/4 1/5 1/12 1/15 1/20 1/20 Defendant/Counter-Plaintiff [3] 1/5 1/15 1/20 defense [3] 26/5 26/11 27/7 defined [2] 78/4 85/2 defines [2] 46/19 46/22 definition [1] 11/21</p>	<p>degree [1] 20/20 degrees [2] 37/17 65/18 deliberate [3] 16/24 18/22 23/12 deliberating [1] 23/8 deliberations [4] 17/25 18/5 23/9 23/17 delightful [1] 97/12 deliveries [1] 56/8 demonstrate [3] 24/22 42/22 77/16 demonstrating [1] 39/11 demonstration [1] 77/15 denies [2] 8/5 90/5 dependent [1] 49/19 depending [1] 19/22 deposition [5] 32/21 44/15 44/16 61/21 91/9 deputy [1] 17/3 derived [1] 82/13 described [3] 9/14 9/15 60/6 describes [1] 57/15 description [2] 8/20 8/21 design [22] 25/3 25/8 39/13 44/18 48/6 52/3 52/15 52/16 52/19 53/15 53/25 54/2 56/13 56/19 56/20 57/1 57/2 57/6 57/12 57/20 82/25 83/9 designed [13] 39/12 50/5 50/10 52/12 60/1 62/21 81/17 81/18 81/20 82/3 82/6 91/5 91/20 designing [1] 25/2 despite [1] 79/4 detail [1] 12/25 detailed [2] 11/9 12/8 details [1] 38/13 detect [1] 66/4 determine [4] 11/6 20/8 49/15 86/11 determined [3] 11/7 11/12 11/16 determining [1] 87/20 develop [1] 89/4 developed [7] 37/14 44/7 58/8 59/1 61/12 61/14 63/20 developing [2] 53/6 61/8 development [3] 52/5 89/10 89/22 device [15] 28/1 36/22 48/11 52/21 53/21 56/8 66/7 66/19 66/23 78/16 79/23 81/12 84/8 84/8 87/23 devices [4] 71/25 74/15 78/17 78/17 devise [1] 65/12 DewertOkin [4] 75/25 80/8 80/15 88/18 dictionaries [1] 17/9 did [25] 4/10 24/25 25/7 26/7 29/7 39/13 45/1 45/10 55/2 55/2 55/4 56/8 63/21 65/22 65/23 65/23 66/15 67/10 77/24 81/7 82/22 83/20 88/16 92/5 92/17 didn't [19] 4/15 4/24 5/3 16/11 16/12 38/9 39/9 39/19 42/24 43/12 52/23 63/19 67/12 73/6 73/14 73/15 73/17 83/4 89/11 Dietmar [1] 82/14 difference [8] 58/1 60/9 61/19 64/11 64/15 64/16 66/1 66/12 differences [1] 64/15 different [19] 10/11 10/12 12/24 14/7 18/3 20/12 29/22 38/10 40/3 43/1 54/3 54/23 56/13 57/18 67/10 67/13 69/5 72/6 73/22 difficult [3] 34/15 36/1 64/11 dimensional [1] 87/6 Diplomate [1] 98/14 dire [1] 2/2 direct [4] 15/22 15/23 16/19 62/1 direction [2] 91/7 91/12 director [2] 33/3 43/15</p>

Case 1:13-cv-01798-CCB Document 258-1 Filed 05/29/15 Page 103 of 115			
D	<p>directs [1] 70/7 disagree [1] 85/14 disclose [2] 69/6 79/17 disclosed [1] 46/15 discuss [3] 16/22 31/22 82/8 discussed [3] 4/7 9/25 28/11 discussion [2] 25/2 56/15 disfavor [1] 27/8 dispute [27] 3/12 10/18 48/19 75/1 77/7 79/7 83/24 85/3 85/5 85/19 85/21 85/21 85/24 86/1 86/4 87/22 88/5 89/7 89/8 89/8 89/9 89/11 89/15 89/19 89/20 90/9 94/5 disputed [1] 57/25 disputes [3] 6/4 34/6 34/7 disregard [3] 14/13 15/2 15/3 disregarded [1] 15/5 dissimilar [1] 41/1 distinction [1] 50/15 distinguish [1] 40/9 distinguishes [1] 44/1 distribute [1] 6/13 DISTRICT [2] 1/1 1/1 divided [2] 9/18 10/11 DIVISION [1] 1/2 do [70] 4/17 4/21 5/3 5/25 6/14 11/11 14/12 15/7 17/6 22/5 23/12 23/13 23/19 25/12 25/21 29/3 29/4 30/22 34/21 36/3 39/18 40/15 41/15 41/22 43/18 46/22 49/21 50/17 53/8 55/2 55/4 55/11 55/13 55/17 58/22 59/22 60/5 61/16 61/23 62/2 62/5 63/3 63/14 63/17 65/1 67/8 68/1 68/4 68/9 71/10 72/14 72/16 72/17 72/21 74/3 74/14 74/16 74/17 75/3 75/4 77/14 81/5 81/7 82/1 82/5 88/16 95/4 96/10 97/3 98/9 document [7] 54/1 62/12 63/1 63/9 90/18 90/20 90/22 documents [10] 6/19 9/5 62/13 65/1 65/2 65/4 76/19 76/24 90/15 91/25 does [25] 6/19 18/25 36/19 37/8 37/15 37/23 38/20 43/17 49/17 58/4 58/4 58/5 60/8 61/15 62/11 63/3 63/3 64/8 65/7 68/7 68/9 69/19 71/18 85/5 89/20 doesn't [24] 19/19 23/16 43/11 49/12 49/17 49/21 59/21 60/5 61/16 61/18 61/23 62/2 62/11 63/14 64/10 65/25 66/12 69/6 70/5 71/25 72/19 82/5 91/17 94/23 doing [10] 5/1 30/23 57/23 60/10 65/13 65/20 66/1 70/25 79/16 94/23 dollars' [1] 80/5 don't [53] 2/25 4/14 4/18 6/24 7/17 12/6 17/4 17/13 17/13 17/14 17/18 17/20 17/21 17/21 17/22 17/23 18/12 19/13 20/11 23/3 26/6 29/10 29/24 30/14 31/2 31/6 31/21 37/20 39/7 40/10 42/20 46/23 49/9 53/7 55/18 64/2 72/4 72/9 73/21 76/23 77/14 79/6 85/19 86/11 87/18 88/5 92/9 94/18 95/3 95/4 95/13 96/13 96/22 done [5] 22/8 45/8 65/22 65/22 94/24 doors [1] 45/1 doubt [3] 20/15 20/19 94/4 Douglas [3] 1/23 98/9 98/13 down [28] 9/22 9/24 18/8 18/19 18/24 24/10 31/21 31/22 35/21 36/14 36/20 41/17 45/1 48/2 48/5 51/24 51/24 55/10</p>	<p>57/10 60/13 62/6 66/24 67/5 67/6 76/7 82/4 83/19 85/3 downward [2] 91/7 91/13 Dr. [13] 24/19 65/15 66/3 66/25 67/8 67/10 67/24 68/4 68/20 69/18 70/2 71/2 72/22 Dr. Howard [12] 24/19 65/15 66/3 66/25 67/8 67/10 67/24 68/4 68/20 69/18 70/2 71/2 Dr. Varner [1] 72/22 draw [4] 15/16 15/18 25/22 69/23 drawing [3] 9/14 54/1 86/14 drawings [5] 8/22 9/15 64/17 64/20 91/25 drawn [1] 28/4 draws [1] 69/21 drew [5] 56/23 56/25 57/8 57/11 91/9 drip [2] 58/16 59/25 dripping [1] 16/10 drippings [1] 58/18 drips [1] 59/13 drive [14] 10/7 38/20 38/20 38/24 39/3 47/7 50/2 50/4 77/16 80/20 83/4 83/6 83/9 83/22 driven [1] 67/17 drives [1] 77/17 due [1] 45/7 duly [1] 5/16 during [9] 14/12 18/6 22/1 43/5 44/16 76/2 85/20 91/9 91/16</p> <hr/> <p>E</p> <p>each [4] 9/18 9/21 11/1 19/15 earlier [3] 36/18 44/8 85/20 east [2] 41/1 41/3 east coast [2] 41/1 41/3 easy [3] 58/5 62/22 83/7 Eaton [3] 1/20 32/19 59/8 echo [1] 33/17 education [1] 87/19 educational [1] 6/6 effect [1] 60/7 efficiently [1] 75/4 efforts [1] 81/8 either [3] 22/22 25/22 49/18 elaborate [1] 17/5 elect [1] 23/13 electrical [5] 1/3 32/8 37/17 65/9 65/18 electronic [1] 17/11 elements [8] 13/12 47/6 48/20 83/24 84/11 85/18 87/2 87/4 else [10] 2/13 16/9 16/24 17/14 28/9 30/19 31/22 40/12 48/17 98/3 else's [1] 73/14 embodiment [2] 86/14 86/15 emphasize [1] 50/9 employee [1] 44/22 employees [1] 42/12 enclosed [2] 11/13 11/14 encountered [1] 59/9 end [30] 3/17 10/3 10/13 10/15 11/10 12/10 13/1 15/8 16/25 17/25 18/14 18/22 19/1 22/8 22/21 23/19 28/7 35/10 37/20 37/21 49/21 58/6 65/5 72/15 74/9 74/10 77/3 94/2 94/3 94/25 engineer [2] 65/19 91/5 engineering [9] 37/17 37/17 47/11 61/14 65/9 65/10 65/17 65/18 65/18 engineers [2] 42/13 90/24 English [4] 43/11 43/17 43/19 55/24</p>	<p>enhance [1] 79/17 enhanced [1] 79/22 enjoy [1] 81/22 enough [3] 66/3 70/25 72/4 enter [1] 81/8 entered [2] 5/12 31/14 entire [7] 43/20 44/14 45/17 68/5 77/18 84/25 85/2 entirely [1] 12/6 entitled [2] 93/24 98/11 envy [1] 73/21 equal [1] 58/5 equipment [1] 4/22 especially [1] 73/6 Esquire [6] 1/13 1/13 1/14 1/16 1/16 1/17 essentially [2] 26/8 27/24 establish [1] 71/17 established [2] 15/19 16/16 ET [2] 1/3 1/5 even [12] 20/5 20/13 26/10 38/25 47/24 49/21 51/5 58/20 60/12 60/15 65/18 66/5 event [1] 15/24 events [2] 90/1 90/12 ever [5] 63/11 63/14 63/22 64/19 64/24 every [1] 54/12 everybody [7] 31/3 31/22 47/18 48/21 48/21 56/1 73/23 everybody's [1] 18/13 everyone [2] 33/18 38/19 everyone's [1] 48/11 everything [10] 18/24 24/3 24/3 24/13 29/7 40/10 48/17 49/19 55/14 73/21 evidence [106] evident [1] 88/2 exactly [13] 35/23 38/5 51/22 52/23 53/24 54/14 55/12 57/8 57/11 60/8 60/15 63/7 64/8 examination [1] 91/25 examiner [2] 68/15 93/3 example [8] 16/4 16/17 86/8 86/9 86/10 92/4 92/8 92/16 except [1] 81/3 exception [4] 24/13 29/24 30/1 30/7 exclude [2] 46/23 46/24 excludes [1] 46/20 exclusive [2] 78/2 94/2 excused [2] 95/7 95/10 executives [1] 75/23 exhibit [4] 18/8 30/8 91/9 91/10 exhibits [3] 14/19 15/10 32/20 exist [2] 55/1 83/5 existed [3] 46/5 54/12 68/23 existence [1] 16/3 exists [2] 16/16 86/25 expect [2] 15/20 30/15 expecting [1] 95/14 experience [2] 15/17 16/15 experienced [1] 18/24 experiences [1] 76/3 experiment [1] 67/24 expert [14] 24/19 26/2 27/21 37/16 65/9 65/9 66/14 66/15 67/1 69/19 72/22 88/24 88/25 91/15 experts [5] 39/6 60/19 61/24 61/25 88/23 expiration [3] 79/3 79/4 79/5 expire [1] 56/16 expired [3] 57/3 57/3 93/25 expires [2] 79/6 79/6 explain [8] 12/25 19/17 22/3 80/8 81/8</p>

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 104 of 115		
E	<p>explain... [3] 86/15 88/25 92/18</p> <p>explained [3] 8/18 78/13 79/8</p> <p>exposed [2] 59/11 60/3</p> <p>expression [1] 14/11</p> <p>expressly [1] 26/9</p> <p>extend [1] 84/24</p> <p>extent [1] 5/1</p> <p>extra [1] 23/16</p> <p>extracted [1] 88/12</p> <p>extruded [3] 49/10 49/20 86/5</p> <p>eye [3] 66/8 66/9 68/8</p> <p>eyes [5] 37/11 37/22 60/19 61/11 74/4</p> <p>eyewitness [1] 15/24</p>	<p>firm [3] 32/6 32/7 32/18</p> <p>first [24] 2/6 5/24 10/9 12/17 25/17 32/3</p> <p>32/9 32/15 33/17 38/22 39/5 39/25 41/22</p> <p>44/22 52/7 52/11 52/12 53/25 65/22</p> <p>75/12 82/16 89/4 89/23 90/6</p> <p>firsthand [2] 76/2 76/11</p> <p>Fish [1] 75/12</p> <p>fit [2] 77/17 84/9</p> <p>fits [2] 47/5 77/22</p> <p>fitting [2] 50/7 84/16</p> <p>five [7] 24/2 31/3 31/11 43/3 43/4 71/7</p> <p>71/11</p> <p>five-minute [1] 31/3</p> <p>fix [1] 63/21</p> <p>flagship [2] 51/13 52/2</p> <p>floor [2] 1/24 59/14</p> <p>Floors [1] 26/16</p> <p>focus [4] 47/3 62/11 62/12 63/5</p> <p>focused [1] 49/12</p> <p>Fogel [1] 68/13</p> <p>folders [1] 7/3</p> <p>folding [1] 16/10</p> <p>folks [1] 41/15</p> <p>follow [3] 6/18 6/25 95/18</p> <p>following [1] 41/12</p> <p>follows [1] 9/16</p> <p>footrest [3] 77/23 84/22 84/22</p> <p>force [4] 66/18 67/21 68/6 92/3</p> <p>forces [7] 66/16 67/3 67/7 67/16 67/23</p> <p>91/23 92/17</p> <p>forefront [1] 45/6</p> <p>foregoing [1] 98/10</p> <p>foreperson [3] 23/13 23/13 23/16</p> <p>forever [1] 56/21</p> <p>forget [1] 26/25</p> <p>forgot [2] 31/16 32/1</p> <p>forgotten [1] 23/1</p> <p>form [2] 17/23 50/7</p> <p>form-fitting [1] 50/7</p> <p>forth [13] 36/21 37/1 59/17 66/17 84/21</p> <p>85/9 86/23 87/16 88/10 88/14 92/6 92/13</p> <p>96/8</p> <p>forward [3] 28/14 33/7 95/13</p> <p>found [10] 39/16 54/13 54/15 54/20 54/25</p> <p>57/2 57/3 57/5 67/2 67/4</p> <p>founded [2] 41/8 42/8</p> <p>founder [1] 32/25</p> <p>four [1] 78/13</p> <p>frame [4] 36/11 67/11 84/10 89/10</p> <p>Francis [1] 1/16</p> <p>Frank [2] 76/14 76/14</p> <p>Frederick [2] 76/7 80/13</p> <p>free [7] 19/11 36/14 56/16 56/20 79/6</p> <p>79/9 93/25</p> <p>fret [1] 76/23</p> <p>Friday [1] 22/17</p> <p>friends [3] 5/4 17/21 35/20</p> <p>front [5] 5/4 40/4 65/15 81/19 93/2</p> <p>function [2] 63/3 64/10</p> <p>functional [1] 60/6</p> <p>furniture [9] 10/8 35/14 35/15 40/20 47/8</p> <p>49/2 71/20 80/12 83/22</p>
F	<p>F.3d [1] 26/17</p> <p>Facebook [1] 17/21</p> <p>facilities [4] 41/10 41/12 41/25 42/1</p> <p>fact [21] 12/3 16/13 16/16 16/16 20/2</p> <p>20/4 20/8 20/10 20/14 20/19 20/20 28/12</p> <p>37/13 39/9 41/19 46/4 54/5 64/12 68/13</p> <p>79/4 93/2</p> <p>factory [5] 41/9 41/9 41/23 41/25 42/24</p> <p>facts [13] 14/9 14/10 14/14 14/21 15/6</p> <p>15/14 15/19 16/3 16/12 16/23 17/8 19/24</p> <p>74/3</p> <p>factual [1] 14/13</p> <p>fair [2] 4/16 43/12</p> <p>fairly [4] 21/7 27/17 43/17 94/14</p> <p>falling [1] 62/7</p> <p>familiar [2] 8/25 65/10</p> <p>family [2] 17/21 35/20</p> <p>fancy [1] 42/24</p> <p>far [3] 11/3 79/3 95/5</p> <p>fashioned [1] 45/1</p> <p>fault [1] 2/7</p> <p>favor [3] 20/4 20/5 20/18</p> <p>favorite [1] 82/1</p> <p>February [1] 51/8</p> <p>Federal [5] 1/24 6/5 26/10 26/17 98/15</p> <p>fee [2] 80/3 80/6</p> <p>feedback [1] 58/19</p> <p>feel [5] 19/11 34/18 34/23 35/3 36/14</p> <p>fence [1] 46/20</p> <p>few [8] 12/24 24/7 34/3 34/24 43/1 53/8</p> <p>54/13 73/5</p> <p>field [2] 80/17 80/17</p> <p>fight [2] 72/10 72/12</p> <p>figure [11] 26/25 27/15 74/4 78/11 86/8</p> <p>86/8 86/11 86/17 86/18 87/4 87/19</p> <p>figures [7] 9/14 9/14 9/15 78/15 79/19</p> <p>83/14 87/19</p> <p>file [1] 82/22</p> <p>filed [22] 38/14 38/15 38/16 38/21 38/23</p> <p>38/25 39/10 39/19 43/24 46/8 46/9 46/10</p> <p>46/14 63/11 63/22 64/22 64/24 71/13</p> <p>71/15 72/10 78/25 82/17</p> <p>filing [2] 9/5 69/3</p> <p>final [1] 22/10</p> <p>finally [3] 21/22 23/11 44/20</p> <p>find [5] 16/20 31/18 49/21 54/7 54/12</p> <p>finding [1] 86/13</p> <p>finds [1] 69/24</p> <p>fine [8] 4/23 14/1 18/10 28/7 29/3 36/4</p> <p>36/5 97/5</p> <p>finished [1] 18/5</p> <p>fins [1] 84/24</p>	<p>general [5] 8/8 12/11 13/1 22/16 75/17</p> <p>generally [2] 14/8 49/1</p> <p>generation [1] 63/21</p> <p>gentleman [1] 46/7</p> <p>gentlemen [7] 5/20 7/7 24/1 31/17 32/5</p> <p>74/23 94/14</p> <p>German [8] 46/8 46/13 46/15 50/21 50/24</p> <p>57/3 79/9 82/14</p> <p>Germany [4] 46/9 76/1 80/15 82/16</p> <p>get [33] 4/10 4/15 4/21 11/9 14/4 23/3</p> <p>23/16 27/20 31/5 31/7 31/23 39/24 46/2</p> <p>52/7 55/5 56/12 56/18 59/16 59/17 59/17</p> <p>59/19 60/3 67/19 73/4 75/3 81/14 82/21</p> <p>94/16 94/20 94/24 96/4 96/23 96/25</p> <p>gets [1] 71/21</p> <p>getting [2] 31/6 71/6</p> <p>give [15] 2/21 4/21 7/8 7/10 11/22 12/2</p> <p>14/1 16/4 22/10 22/11 23/1 23/4 23/22</p> <p>32/14 33/11</p> <p>given [4] 11/21 11/25 14/9 77/25</p> <p>gives [3] 38/6 78/6 87/9</p> <p>giving [3] 5/9 12/8 12/9</p> <p>go [41] 2/12 5/3 5/7 9/15 9/24 10/1 10/1</p> <p>10/13 16/24 17/9 17/21 23/6 23/7 23/7</p> <p>23/12 23/22 31/3 31/12 32/21 35/21</p> <p>36/20 39/5 47/1 47/5 53/18 54/8 57/19</p> <p>59/18 62/2 73/5 73/5 74/16 77/11 81/25</p> <p>82/12 87/18 90/16 90/17 94/17 94/25</p> <p>95/4</p> <p>goes [10] 11/19 14/5 33/5 47/21 47/23</p> <p>51/23 51/24 59/17 66/7 90/11</p> <p>going [193]</p> <p>good [12] 4/2 25/5 31/1 32/5 33/14 52/19</p> <p>56/17 58/19 62/15 74/11 74/18 86/15</p> <p>Gorman [2] 1/16 76/14</p> <p>got [18] 4/5 9/22 38/5 45/2 56/13 58/18</p> <p>59/10 59/12 59/13 65/19 71/7 81/12</p> <p>87/18 89/7 94/1 94/1 94/2 97/7</p> <p>gotten [2] 2/7 7/3</p> <p>Government [2] 46/2 78/6</p> <p>governs [1] 78/15</p> <p>gradually [1] 52/2</p> <p>grant [4] 68/16 78/1 78/5 78/5</p> <p>granted [6] 68/14 68/18 68/24 77/2 93/1</p> <p>93/4</p> <p>grants [1] 80/1</p> <p>grease [9] 58/16 58/18 58/22 59/24 59/25</p> <p>61/18 64/10 68/8 85/12</p> <p>greasy [2] 59/12 59/13</p> <p>great [5] 62/16 72/5 80/25 80/25 82/24</p> <p>green [1] 69/9</p> <p>Greg [5] 1/19 75/14 75/15 76/8 88/21</p> <p>Greg's [1] 75/16</p> <p>ground [1] 62/7</p> <p>grounds [2] 30/11 30/13</p> <p>group [2] 7/13 7/13</p> <p>grown [3] 42/12 43/1 45/9</p> <p>guess [4] 7/4 10/20 15/13 62/6</p> <p>guide [121]</p> <p>Guide Rail [1] 29/15</p> <p>guided [1] 57/18</p> <p>guides [6] 11/17 11/18 48/15 49/11 60/23</p> <p>62/17</p> <p>guiding [30] 28/24 57/23 60/10 60/14</p> <p>61/16 61/23 61/24 61/25 63/14 64/10</p> <p>65/13 66/2 67/23 68/9 70/1 70/3 70/13</p> <p>70/14 70/16 70/19 70/21 70/25 82/8 82/9</p> <p>85/10 86/7 88/14 91/14 92/7 92/15</p> <p>guy [3] 65/20 76/18 76/21</p>
	G	
	<p>game [1] 82/1</p> <p>Gary [2] 1/13 32/6</p> <p>gauge [1] 92/16</p> <p>gave [2] 44/17 53/6</p> <p>geez [1] 59/15</p>	

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 105 of 115		
H	help [5] 6/2 22/7 62/2 62/12 94/9 helpful [2] 6/8 98/4 helping [2] 61/25 66/20 helps [2] 24/18 60/23 here [82] 2/9 4/22 5/2 17/9 18/24 19/5 19/10 22/16 22/24 29/24 36/9 38/5 38/7 38/10 38/15 38/24 40/25 42/7 43/9 43/13 43/14 43/20 44/12 44/13 44/14 45/16 45/18 45/19 47/18 47/21 48/2 48/12 51/1 54/3 54/16 56/23 57/14 58/7 58/12 58/13 58/15 59/19 59/25 60/2 61/1 61/7 61/21 62/7 64/13 66/14 69/8 70/9 71/11 73/3 73/6 73/13 73/18 74/1 75/7 75/16 75/18 75/23 76/1 76/12 77/1 77/21 79/2 79/11 79/22 80/4 80/18 83/1 84/9 84/12 85/2 88/12 90/17 93/10 93/15 93/16 94/20 95/3 here's [5] 57/25 58/1 58/2 59/7 59/9 hereby [1] 98/9 high [2] 20/20 42/13 high-quality [1] 42/13 higher [1] 20/7 highlight [2] 81/16 90/1 highlighted [6] 48/12 49/25 54/3 57/7 69/8 69/9 him [14] 42/4 42/5 42/8 42/15 42/16 42/17 43/13 44/17 65/11 66/10 76/2 88/22 91/15 96/4 hired [3] 44/23 65/8 66/14 his [23] 42/8 42/18 42/18 43/18 44/15 44/24 45/3 46/16 50/4 52/9 57/8 61/22 66/22 69/3 69/18 72/23 73/16 76/3 82/14 88/15 91/9 91/24 92/20 history [3] 63/6 89/2 89/3 Hnath [7] 1/13 32/6 33/14 33/17 42/7 95/17 96/21 hold [1] 36/7 holding [2] 51/15 86/3 hole [1] 58/15 home [2] 81/25 94/17 homes [1] 35/19 honestly [1] 20/11 Honor [28] 3/3 4/4 4/6 4/15 4/19 6/12 23/23 23/25 24/12 25/14 26/18 26/24 27/22 28/10 29/4 29/25 30/10 30/17 30/18 31/1 31/10 32/4 71/9 74/14 94/12 95/17 96/15 96/20 HONORABLE [1] 1/10 hope [2] 4/21 95/25 hopefully [1] 96/4 hoping [1] 94/20 hour [1] 31/4 house [1] 40/10 housing [5] 47/8 47/9 47/10 48/18 83/23 how [28] 4/8 19/18 36/11 37/13 37/15 38/5 41/13 42/17 42/17 43/25 44/1 44/7 44/9 44/10 45/8 46/1 47/5 48/6 48/7 55/4 57/15 58/12 61/10 62/1 79/8 79/21 79/21 81/11 Howard [12] 24/19 65/15 66/3 66/25 67/8 67/10 67/24 68/4 68/20 69/18 70/2 71/2 however [1] 15/6 huge [1] 71/21 humble [1] 42/25 hundred [1] 49/2	13/22 22/21 23/12 23/18 23/22 27/19 31/24 37/18 39/21 44/8 48/7 55/7 82/12 88/15 94/20 I'm [37] 2/15 3/14 4/14 5/8 5/10 10/6 12/8 16/4 23/6 27/2 28/11 28/22 28/25 28/25 29/21 32/6 32/14 33/10 35/9 36/6 36/6 36/7 36/13 36/15 37/10 38/22 47/5 51/15 54/15 62/19 69/22 69/23 71/6 75/11 86/3 89/1 94/20 I've [10] 3/19 7/9 10/22 14/9 17/5 22/15 28/5 43/7 49/25 95/16 idea [4] 56/17 62/15 62/16 74/18 identified [1] 77/10 identifies [1] 90/20 identifying [1] 9/2 image [3] 28/14 28/16 28/16 imagery [1] 87/9 imagine [1] 27/15 immediately [1] 53/22 impeachment [1] 29/21 important [45] 15/11 17/15 17/23 17/24 18/15 19/1 27/3 27/17 32/10 33/19 33/19 33/21 33/23 34/11 34/12 39/9 41/13 41/17 44/6 45/11 45/19 46/18 46/18 49/14 49/16 50/8 50/15 50/16 50/17 50/18 51/11 53/17 74/8 74/24 75/2 78/9 81/11 82/7 82/7 83/10 83/10 85/20 86/6 90/7 91/20 importing [2] 7/21 13/3 imports [1] 50/24 impressions [1] 18/8 improper [2] 25/19 28/16 improvements [4] 46/4 46/5 64/6 64/7 in-house [1] 40/10 INC [3] 1/5 76/6 80/12 include [3] 8/22 13/25 85/6 includes [7] 17/8 17/18 83/23 83/23 83/25 84/2 94/7 including [2] 13/8 91/24 incoming [1] 79/4 indicating [45] 35/21 36/10 37/1 40/18 47/9 47/13 47/18 48/1 51/24 53/14 58/1 58/2 58/3 58/13 58/16 60/10 62/3 62/17 64/13 64/14 66/12 66/18 77/21 78/16 81/23 83/13 83/14 84/9 84/14 85/5 85/22 85/25 86/2 86/3 86/24 86/24 86/25 87/11 87/12 87/13 87/14 88/8 88/9 88/10 90/11 indication [1] 12/4 indirect [1] 16/1 individual [2] 18/13 46/8 industry [5] 42/14 45/3 45/5 49/11 80/20 inexpensive [1] 83/6 inferences [1] 15/16 information [5] 6/2 7/8 9/2 79/20 83/18 informed [4] 27/23 89/15 89/16 95/17 infringe [9] 13/1 26/6 37/8 49/17 49/17 58/4 71/18 71/25 72/20 infringed [9] 8/5 8/12 8/15 12/19 12/25 13/18 21/1 21/4 49/22 infringement [25] 3/9 8/2 8/17 10/22 10/25 11/2 12/5 12/21 12/22 12/23 13/20 14/2 20/1 21/2 21/8 21/15 21/19 26/14 27/9 37/3 64/23 74/25 77/13 90/3 94/11 infringes [6] 39/8 49/15 58/9 60/20 77/9 94/5 infringing [2] 7/21 63/15 initially [1] 53/15 initiated [1] 4/8 innovating [1] 58/24

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 106 of 115			
I	inquiry [1] 49/22 inside [3] 36/1 36/16 48/2 installed [1] 91/19 instance [2] 47/17 52/17 instead [2] 36/15 68/21 instruct [1] 14/7 instructing [1] 8/7 instruction [5] 3/4 4/11 4/13 11/25 56/5 instructions [12] 2/14 2/22 3/2 5/22 12/9 12/11 12/12 14/4 22/10 22/11 23/21 28/7 intellectual [1] 72/1 intended [3] 62/1 62/8 70/7 interest [1] 30/2 interesting [4] 35/16 38/1 67/2 69/20 intern [1] 43/16 internal [1] 90/22 international [3] 38/11 82/17 82/21 Internet [2] 17/10 17/19 interpretation [5] 27/10 27/11 43/13 68/24 69/17 interpreted [5] 12/3 24/20 27/4 27/5 27/9 interpreter [1] 43/12 intrigued [1] 66/25 introduce [11] 6/9 32/15 32/22 39/25 44/24 45/22 50/19 75/10 75/22 76/10 76/13 introduced [5] 7/12 42/8 61/9 63/23 88/15 introductions [1] 32/14 invalid [15] 8/7 8/8 8/9 8/13 8/15 13/7 13/8 13/10 13/18 21/10 21/12 21/18 26/9 27/12 69/18 invalidity [10] 10/24 11/1 12/6 20/7 21/10 21/14 21/24 25/20 26/13 27/10 invaluable [1] 33/24 invented [4] 46/7 48/17 53/12 82/14 invention [14] 8/20 9/12 57/16 78/8 79/18 80/7 80/22 80/23 83/3 84/10 84/11 85/1 85/2 87/21 inventor [3] 79/1 79/17 79/18 inventor's [1] 9/4 invested [1] 40/15 investigate [1] 17/20 investigation [1] 17/6 involved [2] 17/9 85/17 involves [2] 7/15 56/4 is [403] isn't [1] 73/16 isolate [1] 67/16 issue [35] 4/25 6/16 7/1 8/1 10/15 10/18 10/23 12/17 12/20 13/6 19/22 24/24 24/25 27/20 28/13 29/9 37/7 37/22 38/19 49/7 52/6 53/12 53/13 53/13 75/21 77/1 77/10 78/14 89/1 90/9 91/1 91/3 96/11 96/14 96/15 issued [4] 9/4 46/2 69/15 82/23 issues [21] 3/1 10/23 12/5 19/24 20/6 23/25 28/11 29/5 34/1 34/3 34/4 35/12 56/4 76/4 82/8 95/22 96/8 97/2 97/7 97/10 97/11 it [339] it's [166] ITC [3] 4/8 4/8 38/12 items [1] 91/24 its [25] 20/5 20/24 20/24 21/9 21/13 21/21 21/23 38/17 41/11 43/25 50/24 57/15 62/1 62/2 62/8 63/20 77/3 77/9 80/12 80/15 89/4 90/6 90/10 94/6 94/9	J James [3] 33/5 76/15 88/23 January [1] 61/9 Japanese [1] 69/2 Jeffcoat [1] 76/15 job [5] 8/11 14/6 14/7 14/8 44/24 John [3] 1/16 75/11 96/17 Johnson [2] 1/16 75/11 joined [1] 52/8 joint [1] 4/13 judge [9] 1/10 35/5 36/18 39/1 45/23 46/17 48/14 68/13 78/13 judges [2] 14/10 34/2 judgment [6] 30/4 34/8 35/8 73/25 75/8 92/20 Judicial [1] 6/5 judiciary [1] 6/6 juries [1] 20/12 juror [3] 2/10 5/5 6/17 jurors [3] 5/22 16/21 32/10 jury [25] 1/10 2/2 2/5 2/9 2/14 5/7 5/12 5/13 5/14 5/16 5/18 19/13 20/14 23/22 24/7 24/9 28/23 31/14 34/1 34/4 34/10 74/23 81/19 91/21 95/10 jury's [1] 27/15 just [90] 2/6 2/13 2/21 3/25 4/7 4/16 5/11 5/22 6/24 7/10 7/17 8/3 8/25 8/25 9/11 10/1 11/3 17/4 18/11 18/20 19/11 19/12 19/16 23/11 23/14 23/16 23/18 24/2 24/3 24/7 24/10 25/16 25/17 26/24 26/25 28/14 30/5 30/20 31/2 31/22 32/14 36/7 37/23 40/23 40/24 47/3 47/4 47/8 49/9 51/2 51/3 52/22 53/3 55/3 55/4 56/11 57/6 57/9 59/6 59/7 59/25 60/1 60/1 60/6 61/1 62/23 63/18 64/2 65/23 67/9 67/11 67/16 69/7 69/10 72/17 73/7 73/19 73/25 74/7 74/16 78/21 83/1 83/19 85/2 87/2 87/8 92/23 95/2 95/13 97/14 justified [1] 15/16	know [36] 14/6 17/3 17/4 18/2 26/12 32/11 33/21 33/22 34/16 34/19 39/10 39/19 40/24 47/9 47/22 50/17 52/20 55/15 56/18 58/21 61/5 64/11 66/23 70/13 70/16 73/24 74/5 77/2 81/3 81/25 87/3 88/25 92/9 95/6 96/13 97/13 knowledge [2] 79/18 79/23 known [1] 93/16 knows [1] 65/19 Koch [7] 46/7 46/14 48/17 49/23 51/18 51/22 82/14 Koch's [1] 69/3
L	K KAIDI [96] 1/3 1/19 3/25 4/9 7/14 7/20 8/3 8/4 8/5 12/19 13/1 13/10 13/25 14/3 20/6 21/1 21/3 21/9 21/10 21/14 21/22 21/23 24/5 30/4 30/6 32/2 32/7 32/8 33/1 33/3 33/6 33/12 33/15 36/17 37/3 38/2 38/7 38/9 38/10 38/14 39/11 40/2 40/2 40/9 40/23 41/8 41/11 41/13 43/25 44/2 44/5 44/22 45/5 45/5 50/23 50/23 51/3 51/4 51/6 52/7 53/10 53/22 54/10 54/15 57/19 59/22 63/7 63/20 63/23 72/12 72/12 77/8 77/13 78/20 79/8 80/4 80/6 81/2 81/2 85/11 85/11 87/24 88/1 88/15 89/4 89/16 90/5 90/6 90/10 90/24 92/1 92/24 93/15 93/19 94/5 94/10 Kaidi's [10] 21/8 21/18 24/13 41/9 41/9 49/16 52/5 58/24 90/3 93/6 KDP'005 [1] 90/22 KDPT005 [2] 8/3 78/21 keep [10] 11/11 17/24 18/4 18/15 55/3 73/8 80/2 82/7 83/10 95/3 kidding [1] 48/25 kind [7] 42/22 42/22 50/2 53/23 71/20 74/10 87/9 kinds [4] 16/19 28/6 37/18 40/3 Kleinle [3] 75/24 75/25 88/17 knew [1] 39/21	L ladies [7] 5/20 7/7 24/1 31/16 32/5 74/22 94/14 language [8] 12/3 55/23 78/15 78/17 79/19 83/1 86/12 86/13 laser [1] 66/4 last [8] 3/8 3/17 3/17 4/7 7/17 42/11 71/11 73/1 lasts [1] 78/24 latch [1] 62/24 late [2] 23/8 72/7 later [6] 8/7 13/23 15/8 18/1 46/9 82/17 latitude [1] 41/4 launched [1] 71/15 law [7] 14/7 14/9 22/10 32/6 32/6 32/18 49/18 lawsuit [11] 38/14 38/15 63/11 63/22 64/22 64/24 65/2 71/10 71/13 71/15 93/19 lawyers [6] 14/24 19/4 19/9 19/17 31/18 71/3 lead [2] 15/18 90/24 leader [2] 80/16 80/17 lean [1] 5/4 learned [1] 39/11 least [5] 12/11 35/19 37/6 46/18 72/9 leave [5] 19/13 73/1 74/2 89/1 95/2 left [5] 9/23 20/10 24/9 53/7 64/21 legal [5] 12/14 32/15 76/12 76/12 83/16 legs [1] 80/23 length [1] 86/5 lens [1] 25/25 Leo [6] 1/19 33/2 43/8 43/14 43/15 45/13 less [3] 13/21 16/18 66/5 let [13] 2/12 5/25 7/8 16/23 17/3 17/4 17/14 24/3 32/15 80/8 86/16 94/17 95/6 let's [16] 24/5 27/18 31/11 56/19 56/20 57/19 58/24 59/23 68/1 68/1 69/22 81/14 87/14 87/24 90/12 97/6 letters [1] 52/13 level [1] 45/9 licensing [2] 72/23 72/24 life [1] 77/4 life's [1] 42/9 light [1] 15/17 lightbulb [1] 46/3 like [41] 5/5 5/13 15/23 18/7 28/21 34/1 34/4 36/14 41/20 46/3 47/9 47/22 51/3 51/3 52/18 52/22 53/4 53/15 56/10 59/6 59/15 66/23 67/2 69/7 69/10 73/3 74/23 74/24 75/9 75/9 75/22 76/13 78/16 79/16 80/1 80/3 82/3 83/19 84/22 87/10 96/25 likely [4] 3/13 20/3 22/11 23/6 limit [2] 27/15 27/18 limitation [3] 28/2 28/3 48/10 limitations [1] 10/12	

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 107 of 115		
L	<p>limited [2] 18/21 78/2 Lindinger [2] 1/14 32/18 line [7] 3/8 9/24 26/21 36/21 37/1 53/18 62/18 linear [35] 7/22 36/22 36/23 36/24 36/25 37/2 40/6 40/21 46/15 46/23 46/25 48/19 49/1 50/3 51/2 51/11 52/8 52/10 52/11 56/4 65/11 77/19 77/21 77/21 78/20 79/23 80/10 80/11 80/16 80/17 80/20 81/9 81/17 82/24 89/4 lines [1] 9/21 list [2] 9/5 30/8 listed [1] 93/3 listen [3] 17/6 18/16 19/2 litigated [1] 91/1 litigation [1] 90/2 little [33] 2/6 2/8 5/25 7/9 9/22 10/1 13/14 16/7 19/12 19/18 23/10 35/23 36/1 38/2 38/6 40/11 40/11 40/11 40/17 41/4 46/19 57/14 58/15 58/21 58/25 61/4 81/10 86/6 87/3 88/16 89/2 92/2 97/4 lives [1] 75/3 LLC [3] 32/8 81/2 81/5 load [1] 82/7 located [1] 40/23 locked [1] 16/7 Lombard [1] 1/24 long [15] 19/12 19/13 39/12 47/11 48/7 48/7 48/11 50/4 51/19 55/5 56/16 63/14 65/2 73/20 73/20 longer [3] 23/10 60/3 64/7 look [27] 6/11 6/24 7/18 8/24 9/17 16/11 27/19 31/24 33/7 35/7 35/11 36/3 41/24 41/25 52/16 54/8 59/21 61/10 69/7 86/7 86/12 87/19 87/19 87/20 87/24 93/2 95/13 looked [14] 2/16 27/8 39/16 52/17 52/22 53/3 54/6 54/8 57/3 65/23 66/22 68/12 69/4 79/8 looking [8] 15/21 47/4 55/21 55/24 82/21 86/16 86/19 87/10 looks [5] 52/18 64/5 67/2 68/15 87/10 losing [2] 72/2 72/8 lot [29] 4/22 19/10 19/10 33/21 33/23 34/1 34/14 35/1 35/13 36/23 37/12 40/15 41/5 41/11 41/15 42/5 46/2 47/2 49/9 49/12 50/14 56/9 58/23 65/16 65/22 72/22 73/4 73/22 83/17 lower [5] 85/11 86/24 91/11 92/14 92/18 LTD [1] 1/3 luck [1] 74/11 lunch [2] 2/16 22/22 lying [1] 74/6</p>	<p>meeting [5] 13/4 55/6 55/6 55/14 55/21 meetings [1] 45/2 meets [4] 27/4 28/1 28/3 47/15 Members [1] 5/14 mention [3] 4/7 4/24 31/16 mentioned [4] 19/21 20/6 48/24 50/2 merits [1] 39/24 message [2] 2/8 17/22 metal [13] 47/17 49/10 49/20 57/23 59/4 64/7 64/12 64/14 68/8 85/21 85/22 85/23 90/8 mete [1] 87/20 methodology [2] 67/25 68/2 Michael [4] 1/14 1/17 1/20 76/17 Michigan [1] 81/5 mid [1] 82/15 middle [4] 9/22 9/24 43/6 80/19 might [22] 6/4 8/8 8/19 12/24 15/18 16/13 23/9 38/17 43/19 53/21 54/5 55/1 59/17 59/17 59/18 61/4 73/3 84/17 84/18 94/24 96/13 97/23 Mike [2] 32/18 76/18 Miller [2] 1/20 76/18 millimeter [1] 66/6 millimeters [1] 66/5 million [2] 93/21 93/23 millions [1] 80/5 mind [7] 11/11 17/24 18/4 18/15 82/7 83/10 95/3 mine [1] 14/11 minor [1] 3/12 minus [1] 91/12 minute [5] 6/1 7/25 24/2 31/3 53/20 minutes [4] 24/8 31/11 71/7 71/11 Mississippi [4] 75/16 75/18 80/14 88/21 mistake [2] 68/19 90/25 Model [1] 8/3 modified [1] 35/22 moment [7] 10/21 37/19 48/8 55/8 74/14 87/8 95/14 Monday [2] 1/7 22/17 money [6] 7/20 8/16 13/19 40/15 41/11 73/7 monitor [1] 24/17 more [18] 3/13 11/9 11/19 12/8 12/11 12/25 13/23 14/4 20/3 31/4 40/19 41/14 41/14 43/4 74/5 81/10 85/1 86/6 morning [8] 16/6 22/20 22/25 25/1 31/7 31/8 94/21 95/8 most [6] 44/13 45/6 45/6 46/18 83/24 89/1 motion [4] 36/25 36/25 66/10 96/10 motor [23] 35/15 36/9 36/9 36/12 36/16 36/17 36/19 36/24 37/8 37/14 39/3 40/3 42/10 47/20 47/24 48/1 48/6 66/24 67/17 77/20 84/6 84/7 86/20 motor's [1] 77/20 motors [4] 36/16 40/5 41/21 51/3 move [12] 3/25 5/6 5/20 19/12 20/17 36/5 77/22 84/22 84/22 86/23 87/7 87/14 moved [1] 89/20 movement [4] 84/21 91/7 91/12 91/13 moves [8] 66/10 66/17 84/20 85/8 88/10 88/11 88/14 94/9 moving [9] 4/21 11/17 11/18 48/2 52/2 59/19 84/19 91/12 93/10 Moyé [2] 2/8 95/6 Moyé's [2] 23/3 31/23 Mr [3] 61/20 67/8 96/21</p>
M	<p>machine [2] 40/8 66/4 made [28] 2/24 25/20 28/19 29/1 30/21 36/17 37/3 39/13 39/22 42/21 45/1 49/11 51/25 52/23 53/5 53/5 53/10 57/14 58/11 59/10 62/14 63/9 64/4 68/19 69/2 71/12 91/22 91/22 Magic [3] 69/20 69/25 70/20 maintain [1] 27/23 make [46] 14/15 17/15 18/2 19/15 22/9 24/3 28/15 37/21 37/24 38/18 38/23 39/17 40/3 40/5 40/6 40/7 40/8 40/10 40/13 40/16 40/17 40/19 40/20 40/21</p>	<p>41/15 45/10 50/25 51/3 52/21 52/23 53/15 56/21 58/24 61/18 63/23 66/9 66/12 71/18 71/23 71/24 73/7 79/21 80/11 83/6 89/11 92/20 makers [1] 71/20 makes [11] 14/12 35/21 42/18 50/22 51/2 74/5 78/20 78/22 90/6 92/13 96/24 making [18] 7/21 10/25 13/2 27/24 28/25 41/21 42/10 42/25 46/23 46/24 52/9 53/23 55/3 75/20 78/7 79/16 80/7 80/16 man [1] 82/14 manager [1] 75/17 managers [1] 44/13 manner [1] 50/7 manufacture [1] 83/7 manufacturing [6] 64/19 69/2 75/17 75/20 80/13 81/4 many [7] 46/1 46/4 73/4 80/1 89/25 91/24 92/9 March [3] 54/23 56/24 64/22 March 28th [1] 64/22 marker [6] 69/21 69/21 69/25 70/20 92/5 92/7 market [13] 38/19 44/25 51/6 52/7 52/17 56/18 71/19 72/2 72/8 72/11 72/12 76/3 83/5 marketplace [5] 37/16 80/25 81/1 83/5 89/12 markets [1] 43/25 MARYLAND [6] 1/1 1/8 1/25 38/15 76/7 80/13 mass [1] 63/17 Master's [1] 65/17 material [6] 49/10 56/9 58/23 59/10 59/12 86/5 materials [2] 17/10 52/22 matter [4] 9/11 13/9 47/4 98/11 matters [1] 14/13 Max [2] 75/24 75/25 may [40] 1/7 2/9 5/17 6/13 7/3 7/25 8/3 8/9 8/21 10/11 12/12 12/22 13/1 13/8 13/16 13/21 13/25 14/3 14/6 14/11 14/11 15/4 15/11 18/2 19/6 20/13 20/21 22/5 43/3 55/7 55/21 56/3 56/24 74/22 95/24 95/25 96/1 96/4 97/18 98/16 May 27th [2] 55/7 56/3 maybe [9] 4/7 36/1 47/24 59/16 66/5 82/1 96/22 97/10 97/11 Mayer [1] 32/6 MBA [1] 65/19 McCarthy [3] 44/20 44/21 45/8 me [18] 2/12 2/13 3/21 5/25 7/8 17/3 19/4 23/21 24/10 27/20 27/24 32/15 32/16 67/2 80/8 82/4 86/16 95/14 mean [5] 11/13 16/14 18/25 94/23 96/25 meaning [5] 11/7 11/8 11/21 12/1 13/23 means [11] 11/16 17/11 20/2 43/22 46/15 48/14 61/24 61/25 70/2 70/6 86/7 meant [1] 13/24 meantime [1] 38/14 measure [4] 66/7 66/16 66/18 67/21 measured [2] 66/10 67/21 measures [1] 92/17 measuring [1] 67/22 Mecano [1] 51/8 mechanical [5] 37/17 47/11 65/10 65/17 65/17 medications [1] 34/22 meet [1] 49/19</p>

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 108 of 115			
M	<p>Mr. [89] 26/23 29/12 29/13 29/19 32/16 32/19 32/23 32/24 32/25 33/2 33/5 33/11 33/14 33/17 42/7 44/3 44/5 44/11 44/12 46/7 46/14 48/17 49/23 51/18 51/22 52/8 54/18 54/18 54/22 55/9 55/9 55/20 55/20 56/3 56/7 56/23 57/8 59/8 61/13 61/20 62/4 62/4 62/9 63/10 63/12 63/16 64/18 67/1 67/25 69/3 69/19 70/23 71/3 74/13 74/23 75/5 75/9 75/14 77/6 77/10 77/20 79/8 81/7 82/14 83/19 84/1 84/20 88/17 89/19 90/13 90/19 90/24 91/3 91/6 91/15 92/2 92/8 92/17 95/16 95/17 95/18 95/21 95/23 95/23 96/3 96/9 96/9 96/11 96/16</p> <p>Mr. Allen [1] 32/19</p> <p>Mr. Babcock [5] 69/19 71/3 91/15 92/17 96/3</p> <p>Mr. Babcock's [3] 67/1 67/25 70/23</p> <p>Mr. Bowen [4] 95/16 95/23 96/9 96/16</p> <p>Mr. Brian [1] 32/16</p> <p>Mr. Brown [5] 95/18 95/21 95/23 96/9 96/11</p> <p>Mr. Butang [1] 33/5</p> <p>Mr. Dietmar [1] 82/14</p> <p>Mr. Eaton [1] 59/8</p> <p>Mr. Greg [1] 75/14</p> <p>Mr. Hnath [4] 33/14 33/17 42/7 95/17</p> <p>Mr. Kleinle [1] 88/17</p> <p>Mr. Koch [6] 46/7 46/14 48/17 49/23 51/18 51/22</p> <p>Mr. Koch's [1] 69/3</p> <p>Mr. Rongqing [1] 32/23</p> <p>Mr. Rosenthal [18] 26/23 33/11 74/13 74/23 75/5 75/9 77/6 77/10 77/20 79/8 81/7 83/19 84/1 84/20 89/19 90/19 92/2 92/8</p> <p>Mr. Yao [14] 29/12 29/13 29/19 44/3 44/5 52/8 54/18 55/9 61/13 63/10 64/18 90/13 90/24 91/3</p> <p>Mr. Yao's [2] 55/20 56/7</p> <p>Mr. Zhou [2] 32/24 32/25</p> <p>Mr. Zhou's [1] 33/2</p> <p>Mr. Zhu [13] 44/11 44/12 54/18 55/9 56/3 57/8 61/20 62/4 62/4 62/9 63/12 63/16 91/6</p> <p>Mr. Zhu's [3] 54/22 55/20 56/23</p> <p>Ms. [4] 2/8 23/3 31/23 95/6</p> <p>Ms. Moyé [2] 2/8 95/6</p> <p>Ms. Moyé's [2] 23/3 31/23</p> <p>much [17] 11/9 22/17 22/18 23/6 32/12 42/17 42/17 45/7 45/16 49/8 59/3 74/8 81/3 83/11 95/5 95/9 98/5</p> <p>must [13] 3/22 13/11 14/13 15/5 21/2 21/5 21/10 27/10 70/1 70/2 79/17 79/18 79/20</p> <p>my [16] 2/7 5/10 14/6 14/7 23/3 31/23 32/5 33/14 36/15 36/17 38/7 40/2 42/20 51/15 59/13 75/11</p>	<p>need [26] 2/13 6/24 7/18 8/15 11/3 11/8 13/18 16/22 18/11 18/16 19/2 19/8 19/22 22/18 23/2 23/5 23/17 23/21 36/2 36/5 37/20 55/15 60/19 72/9 77/14 94/19</p> <p>needed [2] 3/21 6/3</p> <p>neither [1] 31/4</p> <p>Nese [1] 32/17</p> <p>never [6] 53/1 53/3 56/8 68/23 69/15 97/13</p> <p>new [14] 8/9 13/9 13/10 13/15 41/20 48/22 49/2 57/1 57/20 58/8 58/8 58/9 63/23 79/23</p> <p>newspaper [1] 17/12</p> <p>next [12] 3/20 10/13 22/18 32/12 33/8 41/24 57/19 63/21 77/12 89/13 89/14 90/16</p> <p>next-generation [1] 63/21</p> <p>nice [1] 59/21</p> <p>no [43] 1/4 4/10 5/5 16/8 16/18 23/23 23/24 23/25 26/5 29/8 29/18 38/19 48/19 52/20 55/6 60/2 60/9 64/7 70/2 70/17 70/19 70/21 72/19 72/20 77/6 83/24 85/21 85/21 85/24 86/1 86/4 88/1 89/7 89/7 89/8 89/9 89/11 89/15 94/4 94/5 96/18 97/16 97/18</p> <p>No. [4] 3/4 7/15 8/3 24/16</p> <p>No. 11 [1] 3/4</p> <p>No. 43 [1] 24/16</p> <p>No. KDPT005 [1] 8/3</p> <p>nobody [1] 54/7</p> <p>Nobody's [1] 72/23</p> <p>noise [1] 19/11</p> <p>nonetheless [1] 60/16</p> <p>nonexistence [1] 16/3</p> <p>normal [1] 91/20</p> <p>normally [2] 22/19 23/7</p> <p>North [2] 44/21 44/22</p> <p>NORTHERN [1] 1/2</p> <p>not [164]</p> <p>note [3] 45/10 81/3 81/7</p> <p>notebook [8] 6/17 6/19 7/19 54/12 54/22 54/24 56/7 56/24</p> <p>notebooks [9] 6/13 6/13 54/10 54/14 54/18 54/19 55/19 55/19 55/20</p> <p>notepaper [4] 6/22 6/23 7/2 7/3</p> <p>notes [9] 18/7 18/7 18/12 18/12 18/18 18/20 19/2 31/17 95/2</p> <p>nothing [4] 67/18 68/6 68/7 70/4</p> <p>notice [1] 58/12</p> <p>noticed [2] 55/3 63/10</p> <p>notion [1] 26/11</p> <p>novel [1] 79/23</p> <p>now [75] 2/11 6/10 6/24 7/18 7/25 8/18 8/24 9/9 10/1 10/11 10/20 12/11 13/17 15/12 18/6 20/11 21/13 22/1 35/22 37/10 38/25 39/9 39/21 42/3 45/5 45/21 46/12 49/23 50/3 50/14 51/10 52/5 52/11 52/25 53/5 53/17 54/10 56/14 58/9 58/11 58/15 59/3 59/9 59/11 59/12 60/2 60/11 60/11 61/1 61/2 62/10 64/7 68/11 68/12 70/22 71/10 72/6 75/9 77/8 78/19 79/14 82/5 82/12 83/19 85/7 85/16 86/6 87/5 87/10 87/18 90/6 92/8 93/5 93/13 98/4</p> <p>number [10] 9/4 10/5 10/9 11/23 13/8 18/8 25/24 25/25 29/11 45/25</p> <p>numbered [3] 9/14 9/19 9/21</p> <p>numbers [3] 7/17 9/22 9/24</p> <p>nut [9] 47/21 47/22 47/23 47/23 48/2 48/3 84/2 84/2 84/5</p>	<p>nuts [1] 40/11</p> <p>O</p> <p>o'clock [3] 23/10 94/15 96/23</p> <p>oath [2] 14/17 44/18</p> <p>object [3] 25/1 26/19 28/16</p> <p>objected [2] 30/9 30/11</p> <p>objection [6] 15/2 24/14 24/23 27/1 27/23 30/12</p> <p>objections [1] 96/8</p> <p>objects [2] 66/6 77/22</p> <p>obtains [1] 89/5</p> <p>obviously [4] 15/3 18/18 18/19 30/15</p> <p>obviousness [1] 2/17</p> <p>occurs [1] 31/20</p> <p>October [3] 79/2 79/3 89/10</p> <p>October 12th [2] 79/2 79/3</p> <p>off [12] 16/9 35/22 35/24 69/25 70/20 76/24 79/3 80/2 81/18 91/17 92/7 95/16</p> <p>offer [6] 21/19 72/13 72/14 72/14 72/21 73/7</p> <p>offered [4] 14/20 21/22 21/25 26/24</p> <p>offering [3] 7/22 13/2 78/8</p> <p>offerings [1] 80/18</p> <p>office [11] 6/4 9/6 9/8 68/14 68/17 68/18 68/23 69/4 69/15 77/2 93/1</p> <p>official [3] 1/24 78/5 98/15</p> <p>often [1] 8/22</p> <p>Oh [3] 55/4 62/25 95/21</p> <p>okay [55] 3/5 3/16 5/7 6/23 19/14 23/24 25/9 25/15 27/14 28/5 29/3 33/6 35/21 36/9 36/12 39/24 42/7 43/12 45/20 46/25 48/23 49/4 50/19 51/15 51/24 57/19 58/9 58/16 59/23 67/14 69/22 70/11 77/1 77/8 78/9 78/17 79/4 80/24 81/9 81/14 81/16 81/24 83/15 83/23 84/25 87/5 87/17 90/16 93/12 95/21 96/5 96/7 96/19 98/1 98/5</p> <p>OKIN [73] 1/5 1/19 3/21 7/13 7/16 7/20 7/23 8/2 8/16 12/18 13/19 13/21 13/24 14/2 20/1 20/23 21/2 21/5 21/7 21/17 21/21 21/25 24/6 38/9 38/16 39/1 39/2 39/9 46/8 46/12 46/12 46/22 50/19 50/21 50/24 51/2 51/14 52/18 53/12 55/2 56/18 57/15 58/4 60/11 60/11 60/22 62/24 63/14 66/14 66/14 72/2 75/10 75/17 76/6 76/9 76/13 77/6 77/13 80/9 80/12 81/14 85/7 88/20 89/5 89/15 89/20 90/3 93/8 93/16 94/4 94/10 95/15 95/16</p> <p>Okin America [6] 75/17 76/6 76/9 80/9 80/12 88/20</p> <p>Okin's [12] 2/24 21/15 21/16 37/8 38/20 51/25 69/19 78/22 80/7 80/17 89/16 91/15</p> <p>old [8] 44/23 44/25 45/1 48/24 53/8 62/16 62/16 72/5</p> <p>old-fashioned [1] 45/1</p> <p>older [2] 77/3 78/17</p> <p>once [4] 22/8 22/13 33/7 71/17</p> <p>one [73] 2/10 3/4 4/6 4/15 6/15 11/22 12/22 13/5 14/1 23/2 23/11 23/13 24/13 24/14 25/24 26/15 26/16 27/9 28/13 32/16 33/25 34/3 34/25 36/7 36/15 37/4 38/1 39/2 39/9 40/9 41/19 41/22 42/3 45/6 45/10 45/12 46/6 49/16 52/12 53/10 53/19 56/25 57/4 57/6 57/11 57/20 57/22 57/23 58/2 58/5 58/11 59/3 59/4 59/6 59/7 61/7 62/10 63/23 64/6 69/8 69/13 71/20 73/1 75/5 77/9 81/18 84/13 86/15</p>
N	<p>name [8] 9/4 32/5 33/15 36/23 63/12 63/19 63/21 75/11</p> <p>named [2] 46/7 90/15</p> <p>namely [1] 77/23</p> <p>naming [1] 63/7</p> <p>nearly [2] 11/13 11/14</p> <p>necessarily [1] 18/25</p> <p>necessary [1] 14/2</p>		

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 109 of 115		
<p>O</p> <p>one... [5] 90/1 90/24 91/3 92/24 96/1</p> <p>one's [2] 64/14 64/14</p> <p>one-part [1] 91/3</p> <p>one-piece [6] 56/25 57/4 57/11 61/7 69/8 69/13</p> <p>ones [1] 10/17</p> <p>online [1] 54/6</p> <p>only [30] 3/3 3/16 5/3 14/10 15/7 15/8 15/13 20/18 22/6 23/6 24/24 26/24 27/22 29/9 33/25 42/16 45/12 48/22 53/5 53/8 57/21 57/22 61/9 61/21 62/5 66/22 67/20 67/22 71/19 93/7</p> <p>open [3] 17/24 18/4 95/3</p> <p>opening [11] 5/21 19/16 20/23 24/13 24/15 28/17 29/5 33/11 58/13 85/20 90/19</p> <p>openings [7] 4/21 5/1 23/22 24/4 24/11 28/6 31/5</p> <p>operate [1] 81/19</p> <p>operation [3] 66/1 77/15 91/20</p> <p>operations [1] 81/4</p> <p>opine [1] 24/19</p> <p>opinion [4] 14/13 17/23 65/12 69/18</p> <p>opponent [1] 30/2</p> <p>opportunities [1] 22/2</p> <p>opportunity [5] 19/15 19/17 21/14 21/17 74/9</p> <p>opposing [1] 96/1</p> <p>orally [1] 27/24</p> <p>orange [1] 86/21</p> <p>order [5] 19/20 23/14 25/20 46/1 52/16</p> <p>ordinarily [1] 43/9</p> <p>ordinary [2] 11/21 12/1</p> <p>organization [1] 44/21</p> <p>original [4] 25/3 46/13 54/1 64/17</p> <p>Orioles [1] 51/19</p> <p>other [57] 2/18 2/24 3/1 3/1 3/3 3/16 4/6 5/5 6/19 10/9 12/12 15/14 15/15 15/17 16/1 16/12 17/11 17/19 20/6 24/24 26/15 28/11 28/13 29/5 30/20 30/21 33/20 37/5 44/2 45/14 45/18 48/18 49/5 49/22 51/25 52/1 58/23 60/6 60/20 62/10 64/12 64/15 67/12 68/11 69/19 71/1 71/3 72/7 73/23 75/2 75/23 76/3 76/22 78/16 80/11 85/16 94/24</p> <p>others [7] 18/12 55/9 78/6 78/7 78/7 79/15 79/16</p> <p>otherwise [3] 2/15 23/21 58/6</p> <p>ought [1] 94/16</p> <p>our [43] 4/16 24/15 24/16 24/19 24/21 25/2 25/17 26/7 27/2 27/3 32/6 32/10 32/15 32/16 32/18 32/19 32/22 33/3 33/19 34/9 38/4 39/25 41/25 41/25 43/4 50/19 55/12 65/1 68/19 71/18 71/21 72/18 75/3 75/12 75/13 75/22 76/12 76/16 76/19 81/12 81/12 88/23 93/19</p> <p>ours [1] 28/11</p> <p>out [33] 2/17 3/10 3/19 4/1 7/24 12/4 16/24 23/12 24/11 28/20 29/24 30/5 41/22 52/17 54/8 54/15 54/20 56/15 56/20 58/16 61/18 70/18 72/10 73/4 74/4 74/15 75/23 76/7 76/22 80/21 83/1 85/4 91/9</p> <p>out-of-court [1] 29/24</p> <p>outcome [1] 34/12</p> <p>outline [1] 3/4</p> <p>outside [8] 2/5 15/4 16/8 16/11 17/2</p>	<p>33/22 40/23 50/6</p> <p>over [12] 2/16 3/12 23/17 32/12 33/10 42/11 49/2 51/17 61/4 75/19 82/13 93/9</p> <p>overall [3] 81/11 93/18 93/20</p> <p>owed [1] 79/13</p> <p>owes [4] 77/13 80/6 80/6 94/10</p> <p>own [8] 15/17 35/8 35/8 37/11 37/22 60/19 61/11 92/21</p> <p>owned [2] 7/16 46/12</p> <p>owner [1] 80/2</p> <p>owns [2] 77/6 94/4</p> <p>Oz [1] 32/20</p> <p>P</p> <p>p.m [4] 5/12 24/9 31/14 95/10</p> <p>page [13] 2/23 2/25 3/5 3/6 3/18 9/2 9/10 9/18 9/20 9/21 10/13 54/24 89/25</p> <p>Page 10 [1] 2/23</p> <p>Page 13 [1] 2/25</p> <p>Page 23 [1] 3/6</p> <p>Page 24 [1] 3/18</p> <p>pages [1] 9/17</p> <p>paid [1] 13/22</p> <p>panel [1] 5/14</p> <p>paper [2] 31/21 31/23</p> <p>par [1] 27/12</p> <p>parent [1] 50/24</p> <p>part [56] 3/20 6/6 11/16 11/17 11/18 11/18 27/2 27/3 48/10 48/12 48/15 49/24 50/8 53/19 55/11 56/9 56/19 57/18 60/13 65/14 67/13 77/11 81/13 84/10 84/11 84/12 84/13 84/16 85/4 85/6 85/11 85/13 85/15 85/24 86/1 87/17 87/23 87/25 87/25 87/25 88/2 88/4 88/8 88/8 88/9 88/11 88/12 89/20 90/4 90/5 90/10 90/10 91/2 91/3 91/17 94/8</p> <p>participate [3] 82/9 85/10 92/15</p> <p>participates [2] 60/14 92/14</p> <p>participating [2] 34/13 88/13</p> <p>particular [15] 9/25 11/8 13/4 35/13 35/14 47/15 51/13 79/10 82/4 83/5 83/9 86/17 89/11 95/22 96/8</p> <p>parties [7] 4/12 6/7 7/10 7/12 17/8 24/25 40/1</p> <p>parts [23] 8/19 10/7 10/11 10/12 40/8 42/10 47/7 48/9 48/13 48/16 48/22 50/11 50/13 53/1 83/22 85/2 85/7 85/8 85/9 85/23 86/4 91/17 94/9</p> <p>party [5] 20/19 30/2 38/3 50/20 76/9</p> <p>party-opponent [1] 30/2</p> <p>passed [2] 9/7 72/7</p> <p>past [2] 9/15 23/7</p> <p>patent [168]</p> <p>Patent No. 5,927,144 [1] 7/15</p> <p>patent number [1] 9/4</p> <p>patented [2] 25/23 52/3</p> <p>patentholder [1] 46/13</p> <p>patents [9] 6/3 6/4 46/1 46/6 48/25 56/15 56/22 57/3 68/14</p> <p>path [5] 62/1 62/3 62/8 70/7 94/9</p> <p>pause [2] 59/8 74/20</p> <p>pay [6] 18/16 19/2 73/7 73/13 73/15 73/17</p> <p>payment [2] 79/25 94/11</p> <p>payments [1] 77/13</p> <p>PCT [1] 82/18</p> <p>penalty [1] 14/1</p> <p>pending [1] 30/12</p> <p>people [18] 34/7 34/19 34/24 42/5 42/9</p>	<p>45/14 46/20 46/23 46/24 59/16 61/12 73/22 74/6 76/22 76/23 80/2 82/21 94/23</p> <p>people's [1] 60/4</p> <p>perceive [2] 35/4 37/25</p> <p>perception [8] 34/9 35/8 37/15 71/4 75/6 75/7 82/11 92/21</p> <p>perfect [3] 3/24 35/6 71/8</p> <p>perfectly [1] 19/19</p> <p>perform [1] 37/18</p> <p>perhaps [1] 2/10</p> <p>period [3] 54/11 72/20 78/24</p> <p>permission [2] 78/22 80/5</p> <p>permitted [1] 18/6</p> <p>perseverance [1] 43/2</p> <p>person [5] 12/1 15/24 42/22 73/24 81/21</p> <p>persuade [2] 21/3 21/11</p> <p>persuasive [1] 16/20</p> <p>Ph.D [1] 65/16</p> <p>Philip [2] 76/5 88/19</p> <p>Phoenix [1] 51/8</p> <p>Phoenix Mecano [1] 51/8</p> <p>phone [1] 45/2</p> <p>phones [1] 17/19</p> <p>phrases [1] 11/6</p> <p>physical [1] 91/25</p> <p>pick [1] 36/15</p> <p>picture [7] 24/16 24/17 24/22 28/23 41/9 51/14 86/19</p> <p>piece [43] 2/23 18/1 18/2 24/15 27/16 31/21 31/23 47/17 47/21 48/3 49/4 50/16 53/8 56/25 57/4 57/6 57/11 57/20 57/23 57/23 57/25 58/2 59/3 59/4 59/6 59/7 61/2 61/2 61/6 61/7 62/3 64/23 65/14 68/7 68/21 69/5 69/6 69/8 69/12 69/13 73/10 92/24 93/4</p> <p>pieces [11] 35/23 40/11 40/12 40/19 50/18 51/21 51/23 53/11 57/5 57/18 58/2</p> <p>pinpoint [1] 66/5</p> <p>place [2] 69/23 92/5</p> <p>plain [1] 73/15</p> <p>plaintiff [8] 1/4 1/5 1/12 1/15 1/20 1/20 38/2 38/22</p> <p>Plaintiff/Counter-Defendant [3] 1/4 1/12 1/20</p> <p>plaintiffs [1] 32/7</p> <p>plant [4] 75/17 75/20 80/14 88/21</p> <p>plastic [5] 40/12 64/8 64/14 90/11 90/11</p> <p>platform [3] 28/24 70/15 92/10</p> <p>play [3] 95/25 96/1 97/18</p> <p>played [2] 7/5 87/15</p> <p>player [4] 42/14 45/5 51/10 51/11</p> <p>playing [1] 51/19</p> <p>please [8] 5/15 17/3 23/3 24/7 36/3 68/8 74/22 76/5</p> <p>plus [1] 42/11</p> <p>point [11] 4/18 5/9 6/20 7/24 16/3 21/21 27/14 27/24 30/5 30/15 73/1</p> <p>points [1] 43/19</p> <p>portion [1] 49/25</p> <p>position [6] 21/24 25/17 66/6 72/2 72/18 81/12</p> <p>positions [1] 7/9</p> <p>possible [3] 22/1 24/13 27/10</p> <p>possibly [1] 74/16</p> <p>potentially [1] 62/5</p> <p>power [5] 35/15 40/7 78/1 81/15 81/22</p> <p>powered [1] 81/24</p> <p>PowerPoint [1] 76/20</p> <p>practicing [4] 26/5 26/8 26/11 27/7</p>

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 110 of 115		
<p>preamble [1] 83/21 precedes [1] 48/18 precise [4] 65/20 90/9 91/1 91/3 precisely [1] 66/7 prejudicial [1] 25/24 preliminary [5] 2/14 2/22 3/2 5/22 23/20 prepare [1] 25/21 prepared [2] 6/5 6/7 preponderance [10] 2/25 3/14 3/22 12/15 12/18 19/25 20/2 20/17 21/3 21/6 presence [1] 2/5 present [10] 1/18 3/21 5/15 13/12 15/24 20/24 21/5 21/9 77/8 91/17 presentation [2] 4/16 22/1 presented [2] 15/13 28/23 presenting [3] 21/13 33/7 76/19 preside [1] 23/17 president [4] 33/6 76/6 76/9 88/19 pressing [2] 66/20 66/20 pressure [2] 66/23 67/17 pretty [2] 42/25 70/9 prevent [3] 79/15 91/7 91/11 preventing [1] 91/13 previous [1] 13/12 previously [1] 4/24 price [1] 40/15 principally [1] 43/4 principle [3] 73/10 73/11 73/18 principled [1] 42/18 principles [1] 42/19 printed [1] 13/12 prior [17] 13/13 24/15 24/21 25/21 26/5 26/8 26/11 26/22 27/6 27/7 27/17 68/12 68/15 68/23 69/14 92/24 93/4 probably [7] 7/3 7/16 16/22 18/23 22/20 30/14 45/6 problem [8] 29/19 50/13 58/17 59/7 59/9 59/11 66/21 66/22 problems [3] 3/1 59/24 60/2 proceedings [3] 2/5 18/9 98/11 process [4] 34/12 34/13 68/14 74/8 product [63] 7/23 8/2 13/4 25/23 25/23 26/7 26/22 38/8 38/17 39/8 39/12 44/1 44/7 49/17 51/13 51/16 52/2 52/4 52/25 53/1 53/3 53/7 53/23 55/3 55/12 55/17 55/17 58/8 58/8 58/9 58/20 58/20 59/2 61/8 61/10 62/14 62/16 62/16 62/21 63/21 63/23 65/6 66/1 71/12 71/18 71/24 72/13 72/19 77/9 78/12 81/6 89/5 89/11 89/17 89/18 89/21 90/7 90/8 90/22 91/2 91/6 92/12 93/9 production [6] 53/18 53/22 56/4 56/6 63/17 73/10 products [20] 40/4 41/16 43/1 44/2 44/8 44/19 50/22 50/24 50/25 51/1 52/1 52/1 52/6 53/10 63/24 64/15 65/11 72/5 72/6 78/16 Professional [1] 65/19 progress [1] 78/1 promote [1] 78/1 proof [6] 16/2 19/21 20/16 20/17 21/15 39/2 proper [2] 25/20 25/25 property [6] 72/1 78/4 78/19 80/1 80/2 83/17 proposed [2] 4/10 4/13 protection [2] 82/17 82/21</p>	<p>proud [2] 42/1 54/16 prove [13] 3/22 21/2 21/5 21/10 39/2 39/7 39/7 39/8 60/23 70/25 77/12 77/12 88/2 proved [5] 19/25 20/3 20/8 20/14 20/20 proven [1] 20/10 provide [2] 6/2 64/10 provides [1] 64/9 proving [3] 20/1 20/6 20/19 public [5] 79/17 79/18 79/20 79/23 93/25 publication [1] 13/13 pulled [2] 83/1 85/4 pulling [2] 32/20 70/11 punish [2] 13/25 14/3 purchased [1] 51/7 purpose [2] 18/21 91/22 pushing [4] 62/8 66/24 67/5 67/6 put [18] 21/14 21/17 21/23 23/14 28/14 39/5 42/8 58/17 59/23 60/1 60/5 61/1 61/1 61/15 68/2 69/23 75/4 83/7 puts [1] 41/11 putting [5] 2/24 24/15 24/17 30/21 62/19</p> <p>Q</p> <p>qualifications [1] 72/23 qualify [2] 30/1 30/6 quality [5] 40/14 41/13 41/13 41/14 42/13 question [17] 28/22 28/23 29/1 31/20 31/24 37/9 37/11 60/22 60/25 63/4 70/10 70/13 70/17 70/22 71/2 71/5 72/23 questions [4] 14/24 31/18 31/19 95/7 quickly [2] 80/8 92/23 quite [4] 31/19 59/13 80/24 84/13</p> <p>R</p> <p>radio [1] 17/12 rail [25] 5/4 29/15 29/15 54/2 54/2 62/7 62/17 62/17 62/18 62/19 62/23 62/23 63/10 64/18 90/14 90/21 90/21 91/6 91/7 91/11 91/11 92/14 92/15 92/18 92/18 rails [6] 54/3 62/20 81/18 82/8 90/20 92/6 rain [1] 16/12 raincoat [1] 16/9 raining [1] 16/13 raise [3] 5/15 64/25 97/2 raised [2] 25/1 90/23 ran [2] 67/24 92/6 range [2] 51/3 93/23 rather [5] 57/4 72/11 91/4 93/15 94/16 RDR [3] 1/23 98/9 98/13 reach [2] 75/8 96/13 reached [1] 70/18 read [9] 5/9 5/10 10/6 17/6 17/13 17/14 24/21 27/5 64/21 reading [4] 10/7 12/9 50/2 50/10 ready [1] 53/18 real [1] 59/10 reality [1] 27/25 realized [1] 65/3 really [17] 33/23 40/1 43/1 43/13 44/10 46/21 49/12 50/14 50/16 62/11 63/16 68/22 74/24 77/14 81/22 89/25 90/15 Realtime [1] 98/14 reason [13] 15/17 16/15 17/15 27/22 34/5 41/12 45/13 67/4 71/14 71/15 73/9 73/13 73/13 reasonable [7] 13/22 13/23 20/15 20/19 25/9 93/16 93/22 reasons [1] 13/8 rebuttal [3] 21/20 21/21 21/23</p>	<p>recall [1] 20/11 received [2] 13/22 53/20 recess [4] 22/22 24/2 31/3 31/13 recline [3] 36/10 81/22 81/22 recliner [2] 79/24 81/15 recliners [1] 81/24 reclining [5] 10/8 35/15 35/18 51/12 83/22 recollection [1] 18/13 record [2] 55/20 98/11 recorded [3] 2/2 44/16 55/7 red [1] 48/13 refer [5] 15/7 15/9 36/13 36/18 45/23 reference [9] 12/14 17/10 69/2 69/4 79/9 79/10 82/18 92/25 92/25 references [2] 2/17 9/5 referred [4] 7/25 8/3 8/22 19/25 referring [1] 7/16 refers [1] 6/15 reflects [1] 56/7 regarding [7] 2/14 12/5 16/21 21/5 22/15 23/20 96/9 regardless [2] 14/18 14/20 registered [2] 81/5 98/14 regroup [1] 97/24 rejected [1] 26/9 rejects [1] 26/11 related [1] 81/5 relating [2] 18/9 82/8 relevant [3] 8/10 64/2 76/4 relies [2] 91/24 92/24 remaining [1] 29/9 remains [2] 24/24 25/11 remember [4] 18/11 48/14 66/13 68/12 remote [1] 81/24 remote-controlled [1] 81/24 remotely [1] 82/2 render [1] 27/9 rendition [1] 87/7 rent [5] 80/3 80/7 93/17 93/17 93/24 repeat [1] 16/22 report [1] 17/13 reported [2] 1/22 7/5 reporter [5] 1/24 18/24 98/14 98/14 98/15 represent [1] 33/15 representative [6] 1/19 1/19 33/3 43/10 75/13 75/13 representatives [1] 75/10 represents [1] 32/7 requirements [3] 12/25 13/4 47/1 requires [3] 37/23 47/7 85/22 research [2] 17/6 95/4 resolve [2] 29/7 30/13 resolved [4] 5/8 24/12 29/6 38/14 resources [1] 41/11 respect [16] 24/25 25/7 26/13 26/14 61/16 66/2 68/9 76/3 78/19 81/11 89/25 90/8 90/21 92/4 92/12 92/20 respected [2] 42/13 45/7 respond [3] 21/22 39/6 72/25 responded [1] 66/13 responding [4] 21/15 21/16 21/18 21/24 responsibilities [1] 52/9 responsive [1] 72/4 rest [1] 2/16 resulted [1] 80/22 results [1] 66/25 resume [1] 22/23 return [1] 79/15</p>

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 111 of 115		
R		
Richard [1] 88/24	says [15] 10/4 29/22 50/2 56/3 61/22	serving [1] 32/9
Richardson [1] 75/12	63/1 84/21 89/22 70/1 70/6 73/24 85/7	set [2] 24/3 68/1
rid [1] 56/12	85/11 88/1 91/3	settled [1] 73/4
right [75] 3/7 3/14 4/2 4/19 5/15 5/20 6/24	scale [3] 20/5 20/16 20/18	setup [2] 66/22 67/7
7/6 7/7 7/18 9/10 9/23 17/3 23/6 23/20	scene [1] 63/15	several [1] 43/16
24/1 25/12 31/2 31/11 32/2 36/9 39/21	schedule [1] 22/15	shag [1] 59/16
41/4 41/6 42/7 44/12 46/22 46/23 46/24	schematic [1] 54/1	Shanghai [1] 40/24
48/15 49/24 56/1 56/3 56/18 56/23 58/18	school [1] 43/16	Shannon [3] 75/16 76/8 80/14
60/2 60/10 63/12 68/1 68/4 72/24 73/25	science [1] 78/1	shift [2] 89/17 89/18
74/21 75/6 75/19 77/4 77/20 78/4 78/5	scrap [1] 56/11	shining [1] 16/7
78/6 78/19 79/15 80/2 80/19 80/22 82/18	scrape [2] 70/20 92/10	shipping [1] 41/6
83/1 83/17 84/6 84/9 84/10 85/19 86/7	scrapes [1] 69/25	short [2] 5/25 23/22
86/9 87/10 93/3 94/2 94/14 95/11 95/21	screen [7] 40/4 40/25 51/15 78/3 82/18	shortened [1] 2/21
97/8 97/9 98/3 98/4	85/4 87/7	shortly [2] 7/11 19/14
rights [2] 78/2 78/2	screw [7] 47/11 47/12 48/3 59/12 84/4	should [23] 3/9 3/10 11/21 12/4 15/3 17/2
Ripken [1] 51/18	84/4 84/5	18/23 26/1 26/12 26/13 26/14 28/1 40/4
rise [1] 32/24	screws [1] 40/11	43/14 56/24 63/13 65/3 69/17 72/19 75/7
road [1] 47/15	Sean [3] 44/20 44/20 45/8	81/10 90/15 94/22
rocker [1] 67/14	seat [3] 77/15 77/17 95/12	shouldn't [3] 14/25 17/5 17/9
role [3] 5/22 6/3 44/6	seated [2] 5/17 31/15	show [49] 5/1 5/2 13/11 19/18 22/4 26/25
Rongqing [2] 32/23 42/4	seating [2] 10/8 83/22	29/11 30/14 35/16 35/23 36/8 39/3 39/15
room [2] 16/7 24/7	seats [2] 40/7 51/12	39/20 39/21 39/21 42/21 46/6 53/25
Rosenthal [21] 1/13 26/23 32/16 33/11	second [4] 25/19 36/7 60/13 68/21	54/14 54/24 55/8 57/14 61/10 62/25 63/6
33/15 74/13 74/23 75/5 75/9 77/6 77/10	section [45] 5/11 11/15 11/16 11/17	65/1 65/2 66/4 67/9 70/23 76/21 78/20
77/20 79/8 81/7 83/19 84/1 84/20 89/19	47/14 47/16 47/18 47/19 48/9 48/13	79/12 80/4 80/6 81/1 81/13 82/1 85/15
90/19 92/2 92/8	48/14 50/10 50/13 51/22 51/23 70/5 70/6	86/16 87/5 88/13 92/13 93/8 93/23 94/6
rotating [2] 83/25 83/25	77/11 81/13 84/12 84/13 84/16 85/4 85/6	94/7 94/10
row [1] 65/15	85/8 85/9 85/13 85/15 86/23 86/24 87/12	showed [3] 49/6 84/1 84/20
royalty [9] 13/22 13/23 77/13 79/13 79/25	87/13 87/17 87/23 87/25 88/1 88/3 88/4	showing [1] 24/16
80/6 93/16 93/22 94/11	88/11 88/12 89/18 89/21 90/4 90/5 90/10	shown [7] 12/18 22/3 28/3 40/25 86/21
rubbed [1] 92/7	sections [2] 50/6 88/13	87/4 91/21
rubber [1] 47/15	see [91] 2/12 2/13 4/22 6/8 9/10 9/13	showrooms [1] 35/19
rule [1] 45/13	9/17 10/6 10/13 15/4 16/8 16/12 23/21	shows [3] 39/16 45/2 53/24
run [7] 47/24 53/18 55/16 57/17 59/6	24/5 27/16 29/24 34/18 34/23 35/3 35/24	shrunk [1] 59/3
65/23 76/21	36/2 36/9 36/11 37/6 37/22 37/23 40/25	Shucheng [2] 1/19 33/2
running [1] 9/22	47/12 47/17 48/25 51/21 53/11 53/24	side [17] 9/23 9/23 19/15 33/20 35/20
runs [4] 42/23 43/15 69/24 69/24	54/2 54/22 55/3 55/4 55/19 56/3 57/4	47/20 62/10 69/21 75/10 76/19 84/6 84/9
	57/17 57/21 57/23 58/1 58/1 58/15 59/6	86/18 86/19 86/20 92/5 92/10
	59/11 60/8 60/15 60/19 60/20 61/11	side's [3] 29/5 31/4 71/3
S	64/11 64/13 64/20 65/8 67/18 68/4 69/22	sidebar [1] 19/6
said [35] 12/21 13/15 27/1 28/20 30/6	75/24 76/10 76/20 76/23 77/17 78/3	sides [5] 37/15 84/15 84/16 87/1 88/6
30/22 33/14 33/17 39/17 48/14 49/23	80/18 82/18 83/1 83/8 83/21 83/25 84/13	sideshow [1] 65/5
49/25 52/18 53/20 53/23 55/10 55/16	86/20 87/2 87/6 87/7 87/11 87/12 87/12	similar [7] 9/1 41/3 41/3 41/7 52/24 64/6
56/17 57/19 58/21 58/24 59/22 60/18	87/13 88/7 88/8 88/8 88/9 91/10 91/15	70/10
63/12 63/15 63/16 67/1 67/25 74/24	93/10 93/11 93/13 98/5	simple [5] 16/4 73/15 77/9 83/9 92/19
80/12 85/20 89/19 91/10 97/16 97/18	seek [1] 93/22	simplicity [1] 82/25
sale [4] 7/22 13/2 78/8 90/6	seeking [4] 7/20 28/15 93/15 93/16	simplify [1] 47/3
sales [7] 44/21 81/6 89/23 89/24 93/10	seem [5] 15/16 19/10 23/1 53/11 61/4	simply [3] 27/8 28/22 30/5
93/18 93/20	seemed [1] 3/21	simulate [1] 68/2
same [21] 24/21 26/19 27/1 27/10 27/24	seems [1] 55/11	single [5] 13/12 56/8 57/6 89/18 89/20
52/15 52/23 56/7 60/8 60/15 61/20 62/15	seen [2] 19/4 35/18	single-guide [1] 89/18
64/8 66/12 68/22 69/14 72/5 73/9 73/18	select [1] 23/18	single-part [1] 89/20
88/16 89/25	selected [1] 5/14	sit [10] 24/10 36/14 43/13 43/14 45/12
sample [7] 6/10 6/15 6/16 6/21 6/25 53/9	sell [5] 41/21 55/17 55/18 58/20 63/24	45/14 81/20 81/21 82/4 91/22
53/20	selling [13] 7/22 13/2 38/7 38/8 51/16	sites [1] 17/10
samples [4] 53/5 53/6 53/7 56/10	52/4 72/5 72/6 78/7 79/17 80/7 80/23	sits [5] 58/13 58/14 64/9 67/11 70/15
sat [1] 55/10	80/24	sitting [14] 16/9 19/11 23/2 33/4 36/16
savings [1] 42/9	sells [1] 78/20	42/7 43/9 43/20 45/17 65/15 68/3 75/18
saw [11] 9/1 10/2 10/16 15/25 16/12	sense [17] 15/18 15/20 34/8 35/6 35/8	90/13 94/18
65/25 65/25 77/14 77/15 78/3 90/18	38/6 71/4 74/1 74/2 74/5 75/5 75/7 82/10	skill [1] 11/24
say [37] 8/19 14/12 15/21 16/14 18/17	85/14 88/1 92/21 96/24	skilled [2] 11/22 12/1
26/6 27/2 29/19 30/15 32/1 35/5 38/4	sentence [2] 3/18 3/20	skittish [2] 71/21 71/23
49/9 55/2 55/4 55/11 56/25 58/9 60/13	sentences [1] 10/10	slide [13] 24/16 24/23 25/13 25/17 25/23
60/16 61/20 62/4 62/5 62/25 65/1 68/11	separately [2] 11/2 11/4	27/1 27/23 28/14 29/10 57/19 77/14
68/20 68/22 69/1 69/14 69/16 70/2 70/3	September [1] 89/10	90/16 93/10
70/5 81/3 97/3 97/6	September/October [1] 89/10	slider [38] 36/20 48/4 50/5 50/6 51/23
saying [8] 27/8 29/19 59/15 60/11 67/6	sequentially [1] 46/1	57/17 57/22 59/4 60/8 60/24 66/7 66/10
68/18 90/14 90/24	served [1] 20/11	66/17 67/3 67/5 67/18 69/22 69/25 70/24
	service [5] 33/9 72/5 72/14 72/14 74/24	84/17 84/19 84/20 84/24 85/8 86/22

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 112 of 115			
S	slider... [13] 86/22 87/14 88/4 88/9 88/10 88/14 91/8 91/12 92/6 92/6 92/15 94/8 94/9 slides [6] 24/14 48/4 60/13 87/16 88/4 94/8 slightly [1] 20/5 slit [8] 48/8 57/5 84/15 84/15 86/25 86/25 88/5 88/5 slot [1] 84/25 small [3] 42/25 46/4 46/5 smaller [5] 51/10 58/25 59/2 59/3 59/10 smartphone [1] 34/17 so [154] sold [10] 52/1 52/25 53/1 53/3 56/8 63/18 64/1 64/5 71/12 80/4 solely [2] 61/17 61/17 solution [1] 83/8 solve [1] 59/24 solved [2] 50/5 50/12 solves [1] 60/2 some [58] 5/21 5/21 6/2 6/22 6/23 7/2 7/8 9/22 12/3 12/11 14/13 15/14 15/18 16/12 16/16 18/11 19/24 22/5 29/4 32/14 34/21 35/22 39/20 41/6 41/10 42/21 43/4 43/23 44/8 44/18 46/4 47/5 47/8 50/25 52/13 54/10 58/20 59/13 64/6 65/12 67/3 67/7 69/25 70/20 72/6 73/7 75/22 76/23 76/23 79/8 80/8 80/17 83/1 84/24 86/13 86/20 90/12 96/13 somebody [2] 16/9 23/17 somehow [3] 60/14 61/1 68/20 someone [6] 23/19 38/3 40/12 62/14 68/2 73/14 something [26] 5/5 15/23 18/9 26/9 29/22 30/5 30/8 31/25 34/19 37/5 52/21 52/23 53/17 56/19 56/20 62/1 63/2 63/3 69/13 70/7 73/15 73/16 73/17 75/8 80/21 83/4 something's [1] 66/20 sometimes [6] 19/5 19/8 66/8 82/24 84/17 84/18 somewhat [3] 34/15 37/4 51/10 son [1] 33/2 sorry [3] 31/8 32/1 64/5 sort [6] 19/12 23/17 26/6 50/4 86/13 95/2 Sounds [1] 25/9 Southern [1] 96/10 Southern Motion [1] 96/10 space [5] 45/7 51/9 51/10 51/11 51/13 speak [2] 43/11 43/17 speaking [1] 38/22 specialized [2] 34/2 38/11 specific [4] 11/25 12/14 46/25 78/24 specifically [3] 26/16 39/22 91/10 specification [3] 8/22 9/9 9/18 speculate [1] 15/14 spending [1] 32/12 spindle [30] 24/21 47/10 47/11 47/12 47/23 48/1 59/11 61/15 64/7 64/16 64/24 65/3 65/4 65/13 65/24 66/11 66/12 66/16 66/17 68/6 83/25 84/1 84/3 84/3 85/11 86/21 87/10 87/11 87/11 90/15 spokesperson [1] 23/18 stand [7] 5/15 19/11 36/2 74/18 75/15 75/24 76/5 standard [1] 20/7 standards [5] 12/14 19/21 20/12 20/16 20/22	standing [1] 36/4 start [18] 2/8 2/15 2/20 7/4 10/4 12/15 17/25 40/2 50/3 52/9 75/12 76/25 77/5 87/7 89/22 94/22 95/1 95/16 started [13] 38/7 38/8 42/9 42/24 43/16 45/4 61/8 81/8 89/9 90/2 93/19 94/16 94/20 starting [1] 9/18 starts [2] 83/21 89/4 state [2] 8/10 41/10 state-of-the-art [1] 41/10 stated [1] 77/6 statement [7] 9/11 19/16 29/24 30/1 33/11 83/11 83/16 statements [4] 5/21 14/24 20/23 31/12 STATES [13] 1/1 7/15 7/23 13/3 13/3 46/10 46/11 50/22 71/13 77/25 78/6 81/6 82/23 station [4] 70/11 70/12 92/9 92/11 stay [1] 23/9 stenographic [1] 98/10 stenographically [1] 2/2 step [1] 24/7 still [13] 2/10 23/7 39/1 39/4 44/14 51/10 51/19 59/3 59/6 63/24 79/5 80/23 80/23 stipulated [1] 14/21 stipulations [1] 14/22 stop [8] 55/16 62/6 62/6 73/9 78/6 78/7 78/7 79/16 stopped [2] 53/22 54/6 stops [1] 70/12 story [4] 54/16 54/20 58/6 81/11 straight [1] 36/25 strain [2] 92/3 92/16 strain/force [1] 92/3 strain/gauge [1] 92/16 strange [2] 38/3 61/4 Street [1] 1/24 stressed [1] 66/19 stretch [2] 19/12 74/19 stretched [1] 69/12 stricken [1] 15/2 stuff [5] 28/20 33/21 40/15 48/18 71/20 subject [3] 9/11 13/9 82/12 subjected [1] 91/23 submit [3] 26/5 37/10 91/13 submits [1] 90/14 submitted [2] 30/3 90/23 subsidiary [3] 50/21 50/23 50/25 success [2] 80/25 81/1 successful [3] 44/2 51/5 93/9 such [7] 9/3 24/20 27/4 27/5 37/22 61/2 92/1 sudden [1] 58/17 sue [2] 38/3 38/9 sued [5] 38/9 38/10 50/20 71/14 71/14 sufficient [3] 20/5 20/18 79/20 suit [2] 6/21 85/17 summarize [1] 74/10 summary [4] 7/11 30/3 77/5 94/4 sun [1] 16/6 supplies [1] 40/8 support [2] 20/24 21/23 supposed [2] 18/13 48/22 sure [16] 24/3 27/2 29/21 39/13 39/17 39/22 41/16 50/16 56/21 66/9 71/6 71/18 71/23 71/24 96/25 97/3 surrounded [4] 5/11 11/12 11/14 47/14 surrounding [1] 50/6	surrounds [1] 59/4 sustain [1] 15/1 swear [1] 5/13 switch [1] 74/15 switches [1] 90/10 sworn [3] 5/16 5/18 14/16 sworn/affirmed [1] 5/16 system [8] 6/9 34/1 34/6 34/6 34/10 79/14 94/7 94/8 systems [1] 93/18
		T	
		table [3] 33/4 43/10 49/24 tables [1] 4/23 tablets [1] 17/19 take [33] 4/1 8/24 18/7 18/7 18/11 18/19 18/20 19/2 24/2 27/19 31/2 31/11 31/24 34/22 35/22 35/24 36/2 41/24 42/20 61/18 69/16 70/11 73/14 73/15 73/16 73/17 73/21 79/10 81/18 86/7 87/24 91/17 95/24 Takei [7] 24/22 26/25 27/15 28/3 69/7 92/24 93/3 taken [3] 3/19 12/4 31/13 takes [1] 69/20 taking [6] 2/17 7/10 16/9 18/24 31/17 33/24 talk [31] 4/1 4/20 16/24 17/2 17/4 17/20 19/8 25/6 31/24 37/13 44/7 44/8 44/9 45/21 48/8 49/8 52/5 64/2 68/5 71/10 72/17 74/9 81/10 86/6 89/2 95/3 95/7 96/12 96/22 97/8 98/4 talked [3] 2/21 43/7 71/14 talking [10] 16/5 35/16 37/15 40/24 42/2 48/11 49/3 51/22 57/15 68/13 talks [2] 29/14 70/4 task [2] 50/5 83/3 Tate [2] 26/16 27/19 taught [1] 79/10 team [5] 32/15 76/12 76/12 76/13 76/16 technical [16] 34/2 34/23 35/1 36/22 37/5 54/1 62/12 62/13 64/20 88/24 90/15 90/18 90/20 90/22 91/15 91/25 technical-background [1] 34/2 Technician [2] 1/20 1/20 technology [16] 17/19 33/6 34/16 38/4 38/20 39/14 39/18 39/23 44/5 48/24 49/1 56/20 58/5 73/14 80/10 88/25 television [1] 17/13 tell [31] 2/13 5/25 8/25 9/24 11/5 11/9 13/23 15/2 15/2 18/23 22/21 23/11 24/10 37/18 44/6 44/6 48/7 54/16 61/14 68/7 68/10 68/25 69/18 73/12 73/12 77/5 79/18 79/20 94/22 95/14 97/20 telling [7] 50/12 50/17 63/8 63/9 73/22 74/6 75/19 tells [5] 6/25 15/25 54/19 55/14 73/23 ten [2] 24/2 51/17 ten-minute [1] 24/2 term [7] 11/15 11/22 11/24 12/2 47/11 78/23 79/11 terminology [1] 62/15 terms [5] 2/16 11/20 20/1 31/17 34/15 terribly [1] 23/8 test [7] 28/1 66/15 66/22 67/1 67/19 68/2 69/20 testified [1] 44/16 testify [19] 14/17 26/3 29/13 43/11 43/18 43/21 43/22 43/25 44/15 44/18 45/8	

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 113 of 115		
T	these [50] 7/25 9/17 10/15 11/6 20/12 20/16 20/22 35/16 35/24 36/7 40/8 40/17 40/20 40/21 41/21 41/21 44/19 47/22 49/11 49/17 49/18 49/22 50/3 52/8 54/14 54/18 54/19 55/7 55/19 57/5 58/17 59/24 64/12 65/10 71/21 77/16 78/17 78/17 80/10 81/17 83/24 84/11 85/17 85/18 86/4 87/2 87/3 88/13 90/1 91/20 they [178] they'd [1] 27/1 they'll [3] 14/17 22/2 28/6 they're [35] 2/10 6/3 10/17 18/18 37/18 38/21 39/4 39/5 40/7 41/6 41/19 41/20 42/1 45/18 45/19 49/6 51/9 51/10 52/2 53/8 55/22 62/12 62/20 62/25 62/25 63/5 71/23 72/5 72/6 72/7 72/15 81/20 91/21 91/22 92/10 they've [9] 6/8 40/15 45/9 49/1 51/16 56/15 59/10 59/10 80/16 thing [28] 4/6 5/3 5/24 10/7 25/20 26/15 46/19 48/22 49/16 52/23 56/7 58/23 60/8 60/12 61/20 62/5 64/8 65/13 65/22 65/23 67/20 67/22 68/11 68/22 69/14 69/19 90/1 95/3 thing's [1] 63/17 things [25] 4/22 9/3 14/23 17/22 19/8 23/12 30/21 30/23 33/23 35/3 38/1 40/9 40/21 41/19 41/22 43/23 47/4 47/22 58/12 62/10 73/22 75/2 76/20 79/16 94/24 think [59] 2/9 2/18 2/25 3/3 3/12 4/5 4/14 4/16 4/17 4/18 5/8 7/2 7/19 12/14 14/12 15/11 15/12 18/3 19/17 20/21 24/12 24/14 25/10 25/10 27/14 28/7 28/10 28/15 29/6 29/6 29/9 30/6 30/13 31/6 31/18 37/20 38/4 38/17 43/12 53/20 65/8 67/9 74/10 75/6 77/14 77/19 85/19 86/6 88/5 94/15 94/25 95/24 95/25 96/3 96/10 96/14 96/15 97/16 97/24 third [1] 3/8 third-to-the-last [1] 3/8 this [469] thorough [1] 31/19 those [34] 4/5 9/15 9/19 10/17 10/23 11/7 17/22 22/11 23/20 30/23 34/3 34/9 34/25 36/2 36/15 37/19 40/16 41/13 42/1 42/2 42/16 42/19 42/21 46/6 47/1 48/20 49/8 49/13 49/15 54/3 55/25 60/2 62/19 71/11 though [4] 38/25 60/12 60/15 81/7 thought [7] 28/18 29/25 35/16 43/14 62/18 62/22 79/9 thousand [1] 56/24 three [5] 7/17 49/5 85/16 87/6 97/17 three-dimensional [1] 87/6 through [21] 2/16 9/7 10/5 10/13 10/14 25/22 25/25 31/5 31/12 43/12 44/15 44/17 45/12 47/1 47/5 68/14 77/11 82/22 84/16 84/25 93/20 throughout [3] 15/8 75/18 93/14 throw [1] 56/9 Thursday [1] 22/17 time [34] 2/3 8/10 13/5 32/11 32/12 33/10 33/24 39/12 41/24 45/12 45/17 46/8 46/16 48/7 48/12 50/4 51/20 54/11 56/16 57/13 64/18 68/5 76/8 76/8 78/24 79/12 79/13 89/10 93/13 93/14 93/20 94/20 94/24 95/5 timeline [1] 38/6 times [1] 78/2	timing [1] 40/14 tip [2] 20/5 20/18 today [9] 22/16 31/5 35/14 38/5 43/2 44/9 58/20 63/24 64/5 together [6] 17/16 62/20 83/7 87/4 96/23 96/25 told [13] 7/9 7/19 10/22 16/21 17/5 22/15 28/5 31/17 45/23 54/7 55/1 61/20 94/18 tomorrow [9] 22/20 31/7 31/7 94/18 94/19 96/12 97/8 97/14 97/25 tonight [2] 81/25 97/24 took [3] 28/19 52/16 89/8 tools [1] 17/20 top [8] 3/18 4/2 9/19 44/11 44/13 87/12 87/25 88/8 total [4] 3/22 10/14 21/6 21/16 touch [2] 34/18 35/3 touched [2] 70/18 82/12 touches [1] 70/5 touching [4] 70/3 70/3 70/5 70/8 track [1] 66/11 tracks [2] 28/25 70/14 trade [2] 38/11 45/2 Trademark [1] 9/6 train [15] 28/15 28/24 28/25 70/11 70/12 70/13 70/14 70/14 70/15 70/16 70/18 70/19 70/21 92/8 92/11 trains [1] 92/9 trajectory [1] 93/11 transcribed [1] 2/3 transcript [1] 98/10 transcripts [2] 18/25 32/21 translation [3] 55/23 55/25 56/2 travels [1] 76/7 treaty [4] 82/19 82/20 82/20 82/22 trial [17] 1/20 1/20 3/4 14/12 19/7 19/14 43/5 43/20 44/14 45/12 73/4 73/5 73/5 75/18 75/23 76/2 91/16 tried [1] 54/6 tries [1] 66/15 Troxel [1] 88/24 true [5] 20/3 20/4 24/21 79/11 80/17 trust [1] 73/25 truth [1] 74/6 try [11] 4/17 17/2 17/20 41/22 47/3 55/4 58/24 60/20 74/4 75/3 94/24 trying [8] 19/7 22/3 25/22 30/5 41/21 94/16 96/4 96/6 Tuesday [1] 22/18 turn [1] 33/10 turned [2] 57/9 57/9 turns [3] 47/24 48/1 48/1 tweaked [2] 52/14 52/14 Tweet [1] 17/22 twist [1] 88/7 twisted [1] 69/12 Twitter [1] 17/22 two [72] 3/17 8/19 9/19 11/8 11/11 11/16 11/18 19/21 20/22 25/25 28/4 48/8 48/13 48/15 48/15 48/22 49/4 49/24 50/10 50/13 50/18 51/21 51/23 53/1 53/11 53/19 54/2 55/11 56/9 56/19 56/24 57/5 57/18 57/18 58/2 58/5 61/2 61/6 62/17 62/19 64/12 65/14 69/5 69/6 69/12 73/10 77/11 81/13 84/12 84/13 84/13 84/16 85/2 85/4 85/6 85/7 85/15 85/22 86/4 87/17 87/23 88/4 88/11 88/12 88/23 90/4 90/5 90/20 91/2 94/8 94/9 96/2 two-part [26] 11/16 11/18 48/15 49/24

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 114 of 115		
T	56/21 78/7 79/16 80/3 80/7 usually [4] 22/23 35/20 38/3 78/24	87/14 water [2] 41/4 41/6
two-part... [22] 53/19 55/11 56/9 56/19 57/18 77/11 81/13 84/12 84/13 84/16 85/4 85/6 85/15 87/17 87/23 88/4 88/11 88/12 90/4 90/5 91/2 94/8 two-piece [8] 49/4 61/2 61/6 65/14 69/5 69/6 69/12 73/10 type [7] 16/1 46/25 52/2 52/9 52/11 55/16 67/13 types [2] 35/18 40/5	V	way [24] 8/8 15/21 18/3 24/20 26/12 27/4 27/9 45/1 45/3 47/21 52/20 54/12 55/22 57/2 57/24 66/19 66/21 67/15 68/1 73/23 73/24 84/4 91/18 93/6 ways [4] 12/24 72/9 80/1 96/11 we [210] we'll [23] 2/20 7/4 22/23 23/4 24/4 28/7 31/7 31/12 31/24 39/6 54/24 55/3 55/3 55/4 59/23 62/23 72/15 77/11 77/12 87/7 90/17 96/3 97/24 we're [47] 2/19 2/20 5/9 5/24 16/4 19/7 21/20 22/16 24/1 30/5 31/6 32/2 35/6 35/16 39/10 39/15 39/17 39/20 39/22 40/24 45/21 45/23 47/1 47/3 47/4 49/3 49/8 49/12 50/16 56/21 57/15 57/19 58/21 60/13 63/6 68/18 71/11 73/18 74/3 86/16 89/19 89/25 90/16 94/18 96/4 96/6 97/8 we've [10] 29/6 35/18 35/22 55/22 57/9 57/9 69/8 69/9 88/12 88/16 wear [1] 41/17 Web [1] 17/10 Wednesday [14] 22/17 22/18 31/8 31/8 94/19 94/21 95/1 95/8 95/13 96/4 96/23 97/6 97/15 98/6 week [5] 4/7 22/18 32/12 33/8 73/20 weight [2] 67/20 82/3 weights [1] 68/2 welcome [2] 18/20 31/15 well [36] 2/6 6/20 7/3 12/12 13/16 16/11 24/18 26/4 26/6 27/14 28/3 28/5 28/13 32/17 42/13 43/17 44/19 50/22 50/23 52/13 52/18 59/15 60/12 62/22 63/16 67/9 67/25 68/22 69/13 70/1 70/13 76/11 76/17 80/24 80/24 97/18 well-respected [1] 42/13 went [5] 43/16 51/6 63/12 64/19 70/19 were [24] 2/5 3/1 3/17 5/8 9/6 16/7 23/14 24/15 24/16 24/17 48/19 51/7 51/9 52/12 53/6 53/12 53/15 53/18 57/13 63/15 64/20 72/7 82/4 93/10 weren't [1] 62/7 wet [1] 16/10 what [156] what's [28] 2/23 7/4 9/9 13/13 19/15 20/9 28/2 34/17 34/20 34/21 35/23 38/23 43/10 46/18 49/21 52/3 53/13 55/12 59/1 59/5 61/7 63/4 70/13 70/14 73/24 73/25 74/7 74/7 whatever [4] 5/2 34/11 35/10 39/17 whatsoever [1] 79/7 when [44] 9/6 9/17 10/25 11/9 15/6 15/9 15/15 16/14 18/15 18/21 23/12 27/20 27/25 39/5 39/19 41/19 45/4 45/4 45/19 51/18 52/7 54/5 54/12 54/14 54/20 56/15 56/16 58/11 61/10 61/14 62/14 62/21 63/9 63/20 63/20 64/20 69/7 69/24 76/23 85/8 88/10 92/10 93/1 93/19 where [16] 5/8 11/6 20/14 20/17 20/19 24/15 34/6 36/8 47/15 49/3 66/23 68/15 69/13 74/10 77/24 78/4 whether [23] 3/13 8/11 8/13 12/18 13/7 19/24 20/8 28/1 28/2 28/3 37/23 49/15 60/20 65/12 65/13 66/18 68/16 72/15 77/10 82/8 87/23 90/9 91/2 which [22] 8/8 8/21 9/24 15/1 15/7 16/12 26/1 27/8 28/24 29/10 39/20 40/4 40/6
U	W	
U.S. [4] 44/25 46/2 64/1 89/23 U.S. [7] 50/21 50/23 50/25 64/4 64/5 79/2 89/24 U.S. and [2] 64/4 64/5 U.S. application [1] 79/2 U.S. in [1] 89/24 U.S. subsidiary [3] 50/21 50/23 50/25 ugly [1] 60/3 ultimate [1] 37/7 ultimately [4] 49/15 51/7 82/22 84/21 umbrella [1] 16/10 uncomfortable [2] 23/2 23/4 uncontroverted [1] 53/3 under [5] 14/17 27/11 44/18 58/14 67/12 underneath [6] 35/24 56/1 59/18 77/17 77/22 81/21 understand [8] 6/2 18/20 22/7 27/17 34/15 34/24 47/5 75/2 understanding [1] 31/4 understood [1] 62/2 unfortunately [1] 29/10 UNITED [13] 1/1 7/15 7/23 13/3 13/3 46/10 46/11 50/22 71/13 77/25 78/5 81/6 82/23 United States [10] 7/15 7/23 13/3 13/3 46/10 46/11 71/13 77/25 81/6 82/23 universities [2] 41/5 41/5 unknown [1] 45/5 unlikely [1] 17/1 until [12] 16/24 17/23 17/24 18/4 18/5 35/9 74/11 79/5 79/12 79/12 94/2 95/8 up [47] 5/4 10/20 11/20 11/25 12/7 14/14 15/6 16/7 16/10 16/19 19/4 19/5 19/9 19/10 19/11 24/3 24/15 24/17 24/17 32/20 35/21 36/2 36/4 36/7 36/15 36/20 40/25 41/4 43/9 48/2 48/4 51/24 51/24 57/12 59/23 60/13 65/12 66/15 68/1 74/18 75/15 75/24 79/12 79/12 87/7 87/12 92/10 upcoming [1] 22/4 upper [3] 86/23 92/14 92/18 upside [1] 57/9 upward [1] 93/11 us [5] 17/4 33/4 41/24 66/8 71/13 use [26] 6/24 17/19 20/7 25/2 25/3 25/8 34/2 35/5 38/20 39/13 39/18 40/17 55/11 56/13 57/20 58/5 62/15 68/1 71/4 71/20 74/4 74/4 79/9 79/21 93/17 93/24 used [21] 3/13 24/22 29/21 35/15 40/6 40/7 49/1 51/11 52/22 54/10 59/5 62/16 66/4 66/6 67/10 67/25 71/25 79/6 91/19 92/8 93/25 useful [1] 56/11 uses [6] 34/1 39/3 40/9 57/4 58/23 59/2 using [16] 3/14 7/22 13/2 26/3 28/15 37/11 38/4 39/23 50/13 51/16 56/20	Wait [1] 53/20 waiting [1] 2/10 walk [1] 4/25 walked [1] 91/21 want [48] 5/2 5/3 6/11 8/24 11/11 23/3 23/9 25/12 27/19 29/11 30/20 33/17 35/11 36/7 39/25 40/2 45/10 45/22 50/19 52/5 53/25 56/18 56/21 71/10 71/17 71/18 71/23 71/24 72/9 72/13 72/17 72/17 73/1 73/19 74/18 74/23 75/12 76/25 77/5 81/7 81/16 81/25 82/1 83/19 87/5 89/2 90/1 95/22 wanted [11] 2/8 32/9 32/22 38/18 38/18 50/8 55/16 66/9 71/16 76/10 77/16 wants [2] 72/12 72/12 was [91] 2/2 3/4 4/8 5/3 6/5 6/7 7/5 9/3 9/7 11/6 16/7 21/22 24/14 28/15 30/3 30/3 30/6 31/13 38/14 38/15 38/16 39/10 41/8 43/12 43/23 44/7 44/16 44/22 44/23 44/24 45/5 46/7 48/22 49/24 50/5 50/17 51/6 51/18 51/22 52/9 52/12 52/14 52/15 52/15 52/17 52/20 53/13 54/7 55/1 56/5 56/15 56/25 58/19 59/22 61/13 61/14 61/15 62/14 63/9 63/11 63/22 64/1 64/4 64/18 64/22 64/24 66/9 66/25 67/8 68/5 68/13 69/3 69/5 71/13 77/2 77/25 78/4 79/9 79/10 80/20 82/23 83/3 83/4 89/13 89/14 90/23 90/23 90/25 92/25 93/1 97/3 wasn't [4] 17/18 48/24 56/11 64/1 watch [6] 5/25 17/14 45/14 81/25 82/1	

Case 1:13-cv-01798-CCB Document 258 Filed 05/29/15 Page 115 of 115			
W	which... [9] 44/8 59/12 64/20 68/7 69/9 70/10 73/1 76/25 86/8 while [4] 5/1 53/7 59/19 65/8 white [2] 36/19 48/3 whiteboard [1] 69/21 who [19] 14/18 14/20 29/18 32/19 33/5 33/11 46/8 53/20 54/18 61/13 61/20 72/22 74/5 74/5 75/23 82/21 88/17 91/5 96/1 who's [7] 15/24 44/3 44/11 45/12 65/10 65/15 76/19 whoever [2] 41/20 41/21 whole [9] 10/6 45/12 49/9 49/12 50/14 51/3 64/25 67/12 95/24 why [21] 6/3 6/4 29/14 31/2 38/21 38/22 39/4 44/1 46/12 50/15 50/15 50/16 61/15 63/19 71/11 73/3 73/6 73/6 73/18 95/13 96/22 will [89] 3/21 6/7 7/16 8/15 9/17 11/2 11/5 12/13 16/22 17/5 18/12 18/21 18/25 21/5 21/9 22/2 22/4 22/9 22/11 22/13 22/22 22/22 22/22 23/11 29/18 29/19 31/25 33/3 33/11 34/2 34/19 37/10 38/3 45/19 46/6 58/4 59/16 59/23 59/24 61/16 61/20 61/25 62/4 62/4 62/9 68/7 68/20 69/18 70/2 72/18 74/9 75/3 75/8 75/19 76/1 76/21 76/22 77/8 77/12 77/22 78/20 79/11 79/12 79/13 80/4 80/6 81/1 81/12 84/9 84/22 84/22 85/3 85/15 88/2 88/13 88/17 92/13 92/18 93/8 93/23 93/25 94/6 94/7 94/10 95/16 95/18 95/25 96/14 98/5 willful [1] 3/9 willfulness [3] 2/17 3/19 4/1 windows [1] 16/8 wire [1] 46/20 within [1] 47/10 without [9] 30/25 38/13 60/9 60/16 65/24 66/11 78/22 80/5 81/22 withstood [1] 93/13 witness [6] 18/8 18/16 18/17 29/18 92/1 94/16 witnesses [15] 11/23 14/17 19/3 29/2 31/6 37/13 37/16 42/2 42/3 43/4 45/11 45/18 63/8 88/15 95/14 wizard [2] 32/20 76/18 won't [7] 4/25 23/7 41/17 45/17 81/3 97/10 97/11 word [6] 11/11 13/16 25/3 25/8 42/20 69/11 words [5] 11/5 15/17 44/17 47/2 55/25 work [10] 41/15 42/17 43/2 44/9 44/10 47/22 54/11 82/13 82/14 94/23 worked [3] 24/11 42/17 46/8 workers [2] 62/18 62/23 workhorses [1] 81/20 working [1] 66/16 works [4] 48/6 60/15 61/10 76/8 world [5] 33/25 50/12 50/17 63/18 65/9 world-class [1] 65/9 worried [1] 58/21 worth [1] 80/5 would [48] 3/25 4/1 6/8 6/14 10/12 11/22 11/25 12/2 13/21 18/7 21/7 21/20 22/6 23/7 24/20 24/21 26/2 26/5 26/7 26/8 26/19 27/5 27/5 27/11 27/24 30/1 30/6 30/22 35/16 43/9 53/11 53/12 62/15 67/21 67/22 68/24 69/15 69/16 70/19	70/20 75/9 76/5 91/13 93/21 95/15 97/5 97/11 98/3 wouldn't [3] 58/7 62/22 82/5 write [3] 18/7 31/21 31/22 writing [2] 11/9 12/10 written [3] 8/20 8/21 55/22 wrong [1] 73/25 wrote [1] 55/25 Y Y minus [1] 91/12 Yao [15] 29/12 29/13 29/19 33/5 44/3 44/5 52/8 54/18 55/9 61/13 63/10 64/18 90/13 90/24 91/3 Yao's [2] 55/20 56/7 yeah [4] 3/3 4/12 25/16 85/7 year [1] 44/25 years [11] 42/11 42/11 43/16 44/23 49/2 51/17 63/11 78/25 80/24 93/5 93/9 yellow [3] 54/4 57/7 69/10 yes [16] 3/11 3/19 3/24 4/5 4/5 6/12 6/14 25/14 26/21 30/24 31/9 31/10 74/16 90/17 92/5 95/21 yet [1] 55/3 you [454] you'd [4] 5/13 28/21 36/14 96/25 you'll [32] 4/17 7/11 11/18 13/18 14/4 17/25 18/1 24/5 31/18 32/17 35/24 36/9 37/24 41/19 44/20 60/6 60/8 61/22 61/24 70/6 70/22 76/2 76/20 88/7 88/8 88/8 88/9 88/19 88/21 88/23 91/15 94/19 you're [62] 4/2 4/2 5/1 6/16 10/18 10/25 11/23 12/17 13/6 14/10 14/15 16/8 18/20 19/11 19/23 36/23 37/13 37/14 37/16 38/4 41/12 41/24 42/1 42/3 42/5 42/16 43/3 43/6 43/8 43/21 44/3 44/11 44/17 45/13 48/20 48/25 49/14 50/14 53/1 53/23 54/19 55/21 55/24 56/10 60/3 60/18 60/19 60/22 60/24 61/11 61/13 67/19 69/16 70/10 71/6 72/3 72/13 74/1 74/2 87/10 95/14 97/20 you've [12] 7/19 9/22 12/12 18/5 19/4 34/14 35/13 58/18 59/12 67/2 71/6 97/7 your [86] 3/3 4/4 4/6 4/15 4/19 5/1 5/15 5/22 6/12 7/3 7/18 8/11 8/24 10/25 13/25 14/8 15/11 15/17 15/20 16/15 16/21 16/25 17/19 17/20 17/25 18/4 18/5 18/8 18/18 23/17 23/18 23/23 23/25 24/12 25/14 26/8 26/18 26/24 27/22 28/10 29/4 29/25 30/10 30/17 30/18 31/1 31/10 32/4 32/11 32/12 33/9 33/24 34/17 35/5 35/7 35/8 35/8 37/11 37/22 58/17 58/18 60/14 60/19 61/11 70/18 71/4 71/4 71/9 73/25 74/1 74/2 74/4 74/4 74/14 74/24 75/3 81/25 83/2 87/7 92/21 94/12 95/2 95/5 95/17 96/15 96/20 Your Honor [21] 3/3 4/6 4/15 23/25 24/12 26/18 26/24 27/22 28/10 29/4 29/25 30/10 30/17 30/18 31/1 32/4 71/9 74/14 94/12 95/17 96/20 yours [1] 14/7 yourself [2] 35/11 86/19 yourselves [1] 20/13 Z zero [2] 68/5 68/5 Zhou [24] 1/19 32/23 32/24 32/25 33/2 33/2 42/4 42/4 42/5 42/6 42/22 43/7 43/8 43/9 43/11 43/14 43/18 45/11 45/13	45/18 55/9 55/16 56/5 73/7 Zhou's [1] 33/2 Zhu [14] 44/11 44/12 54/18 55/9 56/3 57/8 61/20 61/20 62/4 62/4 62/9 63/12 63/16 91/6 Zhu's [3] 54/22 55/20 56/23 Zweizig [3] 1/23 98/9 98/13